

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018* (**the Determination**) under sections 60 and 294 of the *Radiocommunications Act 1992* (**the Act**).

Under section 60, the ACMA must determine, in writing, the procedures to be applied in allocating spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act. Under section 294, the ACMA may make determinations fixing spectrum access charges payable by licensees for issuing spectrum licences, and specifying the times when those charges are payable. The Determination is made under both section 60 and section 294 of the Act. The Determination is a legislative instrument for the purposes of the *Legislation Act 2003* (**the LA**). Provisions of this instrument made in reliance on section 60 of the Act are not subject to disallowance (see paragraph 44(2)(b) of the LA and item 29 in the table at regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). However, provisions of the Determination which rely on section 294 are subject to disallowance and each such provision is identified in the notes at **Attachment A**.

Purpose and operation of the Determination

The Determination sets out the procedures to be applied in allocating spectrum licences in relation to spectrum within the frequency ranges of 3575 MHz to 3700 MHz (**the 3.6 GHz band**) and within specified areas. These licences will be allocated in a single auction using the Enhanced Simultaneous Multi-round Ascending Auction (**the ESMRA**) methodology.

The Determination also fixes the spectrum access charges payable by the persons to whom such licences are allocated, by reference to the winning bids at the auction.

Background

In March 2018, the Minister for Communications made three spectrum reallocation declarations: the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Regional Australia) Declaration 2018*, the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Perth) Declaration 2018*, and the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Adelaide and Eastern Metropolitan Australia) Declaration 2018* (**the re-allocation declarations**), which provided that specified parts of the 3.6 GHz band (**frequency range 3575 MHz to 3700 MHz**), within defined geographic areas of Australia, be re-allocated by issuing spectrum licences. The circumstances and reasons for making this spectrum subject to re-allocation is explained in the explanatory statements to each of the re-allocation declarations.

In accordance with section 153L of the Act, the effect of these declarations is that the ACMA may re-allocate the spectrum subject to the re-allocation declarations by issuing spectrum licences issued under Subdivision B of Division 1 of Part 3.2 of the Act, in accordance with a Marketing Plan prepared under section 39A of the Act. The ACMA intends to allocate each of the parts of the 3.6 GHz band specified in the re-allocation declarations in 2018 through the 3.6 GHz spectrum auction.

Allocation limits direction

In July 2018, the Minister issued the ACMA with a direction under subsection 60(10) of the Act, the *Radiocommunications (Spectrum Licence Limits—3.6 GHz Spectrum) Direction 2018* (**the 3.6 GHz**

spectrum limits direction)), directing the ACMA to determine allocation procedures under subsection 60(1) of the Act imposing limits (**allocation limits**) on the aggregate of the parts of the spectrum that may be used by a person, or specified group of persons as a result of the allocation of spectrum licences. The circumstances and reasons for making the 3.6 GHz spectrum limits direction are set out in the explanatory statement to that direction.

The effect of these allocation limits is that the ACMA must determine allocation procedures that ensure no person or specified group of persons will, as a result of the allocation of spectrum in the 3.6 GHz band, be able to use, under a spectrum licence and PTS licence for PMTS Class B services:

- > more than an aggregate of 60 MHz of the 3400-3700 MHz band in each metropolitan area;
- > more than an aggregate of 80 MHz of the 3400-3700 MHz band in each regional area.

Each of the metropolitan and regional areas are defined in the 3.6 GHz spectrum limits direction. The 3.6 GHz spectrum limits direction effectively requires the ACMA to take into account existing spectrum licences, and PTS licences for PMTS Class B services, held in the relevant band (3400-3700 MHz band). The 3.6 GHz spectrum limits direction also sets out circumstances where existing holdings in the relevant band may be rounded down, or must not be taken into account in determining whether the issue of a spectrum licence will contravene the allocation limits.

The Determination sets allocation procedures that are designed to comply with the 3.6 GHz spectrum limits direction. These procedures include a requirement on each applicant and successful bidder to identify any relevant associates and provisions prohibiting the nomination or allocation of lots that would cause a successful bidder to exceed the allocation limits.

The Determination sets out in detail the procedures that will be used to conduct the auction. These procedures include the requirements and responsibilities of applicants, bidders and the ACMA throughout all stages of the allocation process. The Determination also sets out rules to deter collusive behaviour, and sets potential consequences for breaching those, or other parts, of the Determination.

The allocation procedures describe the necessary application and registration process for parties to become eligible to participate and bid for lots at auction. This process includes the submission of required documentation and the payment of application fees, as well as the lodging of an eligibility payment or the provision of a deed of financial security.

Rules governing how applicants can bid on spectrum in the auction are set out in the Determination. The ACMA will auction spectrum in the 3.6 GHz band divided into the lots described in the *Radiocommunications Spectrum Marketing Plan (3.6 GHz Band) 2018 (the Marketing Plan)*. Each lot is defined by a geographic boundary and frequency bandwidth.

The auction will be held via a secure online program using the ESMRA methodology.

The ESMRA auction for the 3.6 GHz band will be conducted in three stages:

1. **primary** stage – A series of rounds through which all products are offered simultaneously and which progress according to a clock function. In each round, bidders indicate their demand for generic lots within a product.

Before the auction starts, the auction manager enters the demand for lots within each product in accordance with the demand bidders nominated in their eligibility nomination forms. In each round bidders make a bid, which is a request to change the bidder's demand at a particular price point. Therefore, in the first round, bidders indicate whether they wish to change their demand from the level nominated at application, and the price point at which they wish to change their demand.

Bids may be changed at any time until the nominated end time of the round. At the end of each round the auction system processes all bids in accordance with the processing algorithm set out in

Schedule 1 to the Determination. If demand exceeds supply for any product, the auction continues to the next round. The primary stage concludes when there is no excess demand across all products. Detailed rules about the primary stage are set out in Schedule 1 to the Determination.

There are 25 x 5 MHz generic lots being offered in each area, except in Perth where 16 x 5 MHz generic lots in the lower Perth band (3575 MHz – 3655 MHz) and 9 x 5 MHz generic lots in the upper Perth band (3655 MHz – 3700 MHz) are being offered.

2. **secondary** stage – if, after the primary stage has finished, there remains any single generic unallocated lot in any product (**residual lots**), a secondary stage commences in relation to those lots in accordance with the procedures set out in Schedule 2 to the Determination. The secondary stage uses a Simple Clock Auction (**SCA**) format with a simple ascending bid methodology. All residual lots will be offered concurrently within this stage. The secondary stage concludes when the final round has concluded for each residual lot available for bidding in the secondary stage.
3. **assignment** stage – The purpose of the assignment stage is to assign lots to specific frequencies within the band. Successful bidders from the primary and secondary stages are invited to submit bids on a number of frequency range options determined by the auction software in accordance with the procedures set out in Schedule 3 to the Determination. For example, in the case of three successful bidders with no unallocated spectrum, each may bid on whether their holding is the low, middle or high allocation within the frequency band.

Related instruments

Other legislative instruments affect the re-allocation of spectrum in the 3.6 GHz band. These instruments provide additional information about the auction and the spectrum licences that will be available for allocation.

Under section 39A of the Act, a Marketing Plan for the 3.6 GHz band has been prepared. This Marketing Plan specifies the spectrum available and the conditions that will apply to its use under spectrum licences. The technical conditions to be included in spectrum licences allocated in accordance with the Marketing Plan and the Determination are drawn from the ACMA's existing technical framework for the 3.4 GHz band, as amended by the *Radiocommunications – 3.4 GHz Omnibus Variation 2018 (No. 1) (the Omnibus variation)*, developed in consultation with industry stakeholders. The broader technical framework that will apply to spectrum licences allocated under the Determination are set out in the following legislative instruments, as amended by the Omnibus variation:

- > the *Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters – 3.4 GHz Band) 2015*;
- > the *Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers – 3.4 GHz Band) 2015*;
- > the *Radiocommunications (Unacceptable Levels of Interference – 3.4 GHz Band) Determination 2015*.

A provision-by-provision description of the Determination is set out in the notes at **Attachment A**.

Provisions of the Determination made in reliance on section 294 are disallowable for the purposes of section 42 of the LA and these specific provisions are identified in the notes at **Attachment A**.

The Department of Communications and the Arts has conducted a review into potential reform of the spectrum management framework in Australia. As a result it has published and consulted on draft new spectrum legislation. At the time the Determination was prepared, no Bill had been introduced into the Commonwealth Parliament. However, the spectrum legislation proposed, will, if made, replace the Act and may affect licences issued in the 3.6 GHz spectrum auction. In May 2017 the Department of Communications and the Arts published a consultation paper entitled “*A proposed approach to*

transition from the 1992 Act to the Radiocommunications Bill” (available from the Department’s website at <https://www.communications.gov.au/>), which discussed proposed arrangements for transition and noted that it is intended that existing spectrum legislation issued prior to any new legislation would continue in effect until expiry with minimal impact to existing rights and obligations. Applicants should consider the information about the proposed legislation that can be found at www.communications.gov.au/what-we-do/spectrum/spectrum-reform. Further information may be obtained by contacting the Department of Communications and the Arts at spectrumreform@communications.gov.au.

Documents incorporated by reference

The Determination incorporates the following Acts and legislative instruments by reference (including by the adoption of definitions), or otherwise refers to them:

- > the 3.6 GHz spectrum limits direction;
- > the *Acts Interpretation Act 1901*;
- > the *A New Tax System (Australian Business Number) Act 1999*;
- > the *Australian Communications and Media Authority Act 2005*;
- > the *Banking Act 1959*;
- > the *Competition and Consumer Act 2010*;
- > the *Corporations Act 2001*;
- > the *Criminal Code Act 1995*;
- > the *Insurance Act 1973*;
- > the *Legislation Act 2003*;
- > the *Legislation (Exemptions and Other Matters) Regulation 2015*;
- > the Marketing Plan;
- > the *Public Service Act 1999*;
- > the *Radiocommunications (Interpretation) Determination 2015*;
- > the re-allocation declarations;
- > the *Telecommunications Act 1997*.

The Acts and legislative instruments listed above may be obtained from the Federal Register of Legislation (www.legislation.gov.au). The Acts are incorporated as in force, from time to time, in accordance with section 10 with the *Acts Interpretation Act 1901* and subsection 13(1) of the LA. The legislative instruments listed above are incorporated as in force, from time to time, in accordance with section 6 of the Determination and subsection 14(1) of the LA.

The instrument also incorporates the following documents by reference:

- > the Australian Spectrum Map Grid 2012;
- > the HCIS – List of Population Data.

The Australian Spectrum Map Grid (ASMG) is used to identify geographic areas of spectrum licences. The ASMG describes the ASMG and the associated Hierarchical Cell Identification Scheme (HCIS) that are used to define relevant the geographic areas referred to in the Determination and

other relevant legislative instruments. The Australian Spectrum Map Grid 2012 is available from the ACMA's website: www.acma.gov.au. The Australian Spectrum Map Grid 2012 is incorporated as the document existed at the time the 3.6 GHz spectrum limits direction was made as permitted by subsection 314A(2) of the Act. The HCIS – List of Population Data is a document published by the ACMA which identifies each ASMG cell and block by its HCIS identifier and lists the corresponding population based on Census data. This document is incorporated as that document existed at the time the 3.6 GHz spectrum limits direction was made. At that time this document could be found on the ACMA's website: www.acma.gov.au.

Consultation on the Determination

Before the Determination was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the *Legislation Act 2003*.

A draft version of the Determination was released for public consultation on 18 May 2018, together with the consultation paper [*Draft allocation instruments for 3.6 GHz band \(3575-3700 MHz metropolitan and regional lots auction\)*](#). Consultation closed on 15 June 2018.

The ACMA received a total of eight written submissions to this consultation process. The ACMA took the views of stakeholders into consideration during the revision of the Determination.

Some of these submissions raised issues in relation to the timing and details of certain decisions that the ACMA would be empowered to make under the Determination (secondary decisions), such as timing of application periods, timing of auction rounds and break periods, and when payment would be required. Three submitters supported deferring licence payment until the first quarter of 2020, just before the licences commence on 30 March 2020. Submissions relating to these secondary decisions will be taken into account in making those secondary decisions.

Some submitters expressed concern that the Determination does not provide for the ACMA to disclose details of all excess demand after the end of each round during the primary stage. However, the ACMA remains of the view that disclosing this information may increase the risk of strategic demand reduction during the auction and considers that it is appropriate to only disclose exact excess demand where it exceeds 20 MHz (4 lots) for a product. Where excess demand is equal to or less than 20 MHz for a product at the end of a round, the Determination provides that the ACMA will disclose that fact.

A number of submissions expressed concern about the potential for 'accidental eligibility reduction', where partial application of bids can lead to an unintended loss of eligibility points. Therefore, the ACMA has amended the Determination to require that calculation of the end of round activity is based on the higher of the expressed demand (bids placed during the round) and the posted demand (demand after bid processing). This ensures that bidders are not disadvantaged when their bids are partially applied and their resultant activity is lower than expressed in their bids.

Three submissions made suggestions in relation to the rules for the grouping of lots in different areas won by the same bidder; and sought to increase the minimum number of working days required to be allowed between the end of the (primary or secondary) stage and the assignment stage. The ACMA has implemented both of these suggestions. Two submissions expressed concern that the application process proposed required applicants to submit applications, nominate lots and make eligibility payments at the same time. In response the ACMA has introduced a two stage application process, allowing the ACMA to determine a separate deadlines for submission of initial applications (**application deadline**) and the nominated of lots (**eligibility deadline**).

At the time of consultation the Minister had not yet made the 3.6 GHz spectrum limits direction and, consequently, the draft Determination included standard text, included in previous allocation determinations made under section 60, regarding possible allocation limits that may apply, subject to the ACMA receiving a direction from the Minister under subsection 60(10) of the Act. One submitter requested that the usual affiliation reporting requirements be relaxed to lessen the reporting burden on applicants. However, having received the 3.6 GHz spectrum limits direction, the ACMA must determine procedures that meet the requirements of that direction, including in relation to the assessment of affiliations.

In accordance with subsection 60(14) of the Act, the ACMA consulted with the Australian Competition and Consumer Commission (ACCC) about whether the procedures in the Determination should include a requirement that the ACMA give specified information to the ACCC and, if so, the nature of that requirement. The ACMA consulted with staff of the ACCC in May 2018. Section 74 has been included in the Determination to reflect the possible interest of the ACCC in the auction process.

Regulatory impact assessment

The Department of Communications and the Arts considered whether a regulatory impact analysis process was required in relation to the allocation of spectrum licences in the 3.6 GHz band by undertaking a preliminary assessment. Based on this preliminary assessment, the Office of Best Practice Regulation (OBPR), determined that no further regulatory impact analysis was required – OBPR reference number 23261.

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility to be prepared in respect of that legislative instrument.

The statement of compatibility with human rights set out below has been prepared to meet that requirement, to the extent it applies to the Determination.

Overview of the instrument

On 5 March 2018, following a recommendation from the ACMA, the Minister for Communications made three spectrum reallocation declarations: the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Regional Australia) Declaration 2018*, the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Perth) Declaration 2018*, and the *Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Adelaide and Eastern Metropolitan Australia) Declaration 2018*. These re-allocation declarations provide that specified spectrum in the 3.6 GHz band, within certain identified geographic areas within Australia, is to be re-allocated by issuing spectrum licences.

Under subsection 60(1) of the Act, the ACMA must determine the procedures for allocating spectrum licences by auction, tender or for a pre-determined or negotiated price. The Determination is made, in substantial part, under that provision. The Determination sets out the procedures to be applied in allocating spectrum licences in the 3.6 GHz band. These licences will be allocated in a three stage auction process using the ESMRA methodology. To the extent that the Determination is made under subsection 60(1) of the Act, it is not a disallowable instrument (see item 29 in the table at regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

Under subsection 294(1) of the Act, the ACMA may also make determinations fixing spectrum access charges payable by licensees for issuing spectrum licences and specifying the time when spectrum access charges are payable. The Determination fixes the spectrum access charges payable by the

persons to whom spectrum licences in the 3.6 GHz band are allocated, by reference to the winning bids at the auction (or, if there is no auction, by reference to starting prices set by the ACMA). To the extent that the Determination fixes the spectrum access charges payable by licensees for issuing spectrum licences as a result of the auction, and the timing of such payments, the Determination is made under subsection 294(1) of the Act. Provisions which are made under section 294 of the Act are identified in the Determination and in the notes in **Attachment A**.

Subject to compliance with the allocation limits required to be included in the Determination by the 3.6 GHz spectrum limits direction, any person may apply to participate in the auction to be held in accordance with the Determination.

Human rights implications

The ACMA has assessed whether the Determination is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the Determination does not engage any of those rights or freedoms.

Conclusion

The Determination is compatible with human rights as it does not raise any human rights issues.

Notes to the *Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018*

PART 1–PRELIMINARY

Section 1 Name

This section provides for the Determination to be cited as the *Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018*.

Section 2 Commencement

The section provides for the Determination to commence at the start of the day after it is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed at www.legislation.gov.au.

Section 3 Authority

This section identifies the provisions of the Act that authorise the making of the Determination, namely, sections 60 and 294 of the *Radiocommunications Act 1992*.

Section 4 Interpretation

This section defines a number of key terms used throughout the Determination, and identifies where other key terms are defined in the Determination. A number of other expressions used in the Determination are defined in the Act.

This section also provides that the range of numbers that identifies a frequency band or a frequency range includes all frequencies that are greater than but not including the lower frequency up to and including the higher frequency, and that a reference to time in the Determination is a reference to the legal time in the Australian Capital Territory.

Section 5 Lots and Products

This section defines terms and phrases that relate to the description of units of spectrum (lots) and groups of lots (products) that are being offered in the auction. The Marketing Plan referred to in this section is the *Radiocommunications Spectrum Marketing Plan (3.6 GHz Band) 2018 (the Marketing Plan)*.

There are 15 products being offered in the auction. The 15 products cover 6 metropolitan areas (excluding Darwin and Hobart) and 9 regional areas. Thirteen of the products contain 25 x 5 MHz lots and the Perth area has 2 products with the Perth lower band product having 16 x 5 MHz lots and the Perth upper band product having 9 x 5 MHz lots.

Section 6 References to other legislative instruments, and to other instruments or writing

This section outlines that in the Determination, unless the contrary intention appears, a reference to another legislative instrument is a reference to that other legislative instrument as in force from time to time, and a reference to an instrument or other writing (other than a legislative instrument) is a reference to that instrument or writing as existing from time to time.

Section 7 Giving documents to the ACMA

This section sets out requirements for lodging documents with the ACMA, including the alternative means by which documents can be lodged. These requirements apply to any documents being lodged with the ACMA for the purpose of the allocation process under the Determination. They are intended

to work primarily with section 29 (Making an application) and section 38 (Eligibility payment or deed of financial security required), among other sections.

A person may give a document to the ACMA by email, fax or delivery to a physical address (including delivery by registered mail). Where documents are submitted by email, this section also prescribes the electronic file format that particular documents being lodged must be in, namely, Portable Document Format (PDF) for any document, Rich Text Format (RTF) for any document that is not a statutory declaration or a deed, or any other electronic format approved by the auction manager.

Where documents are lodged by fax, this section also prescribes the information that must be provided on a cover sheet to accompany the documents being lodged.

Section 8 Statutory declaration for body corporate

This section provides that where the Determination requires a body corporate to make a statutory declaration, such a declaration must be made by a director or a secretary of that body corporate.

Section 9 Payment of amounts

This section prescribes the manner in which payments under the Determination must be made to the ACMA. Subsections 9(4), 9(5) and 9(6) relate to the determination of spectrum access charges set under Division 2 of Part 6 of the Determination for the purpose of section 294 of the Act and are therefore disallowable under section 42 of the LA.

Amounts can be paid to the ACMA by bank cheque or by electronic transfer and must be made in Australian currency.

Where a person pays an amount by bank cheque, the payment must be made by the deadline specified in, or set in accordance with, the Determination.

Where electronic transfer is used to make a payment, the ACMA must receive from the person making the payment evidence (such as a transfer receipt) that an electronic transfer has been made for the full amount. A person will be taken to have made a payment by the specified or set deadline, provided the ACMA receives the full amount in the ACMA's nominated bank account within 3 working days of the deadline and the person gives the ACMA evidence that the transfer was made on or before the deadline. Where full payment is not received within 3 working days, the payment will only be taken to have been made if the person making the payment can show that it has taken all reasonable steps to ensure that the amount was paid by the due date.

This section also provides that a payment will not be considered to have been paid in full where bank charges or government duties imposed on the payment reduce the amount to less than the amount due. It is in the interests of the person making the payment to ensure that any bank charges or government duties imposed on a payment do not reduce the payment received by the ACMA to less than the full amount due.

Any amount to be paid under the Determination that is not an amount in whole dollars is to be rounded up to the next dollar.

PART 2—LIMITS ON ALLOCATION OF SPECTRUM

Division 1 Allocation Limits

Section 10 Interpretation

This section defines a number of key terms used in Division 1 of Part 2.

Section 11 Meaning of *allocation limits*

The Minister has given the ACMA a written direction under subsection 60(10) of the Act (see section 5 of the 3.6 GHz spectrum limits direction), which requires the ACMA to determine procedures that impose limits on the aggregate parts of the spectrum that, as a result of the allocation of spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act, may in total be used by the members of a specified group of persons, namely, any person and that person's associates. As required by the 3.6 GHz spectrum limits direction, the allocation limits apply to the use of spectrum in the relevant band, 3400 MHz - 3700 MHz, in each designated area, as those areas are defined in the 3.6 GHz spectrum limits direction.

Section 12 Allocation limits

This section sets out the allocation limits imposed in accordance with the 3.6 GHz spectrum limits direction. The section also explains how existing holdings of spectrum in the relevant band are to be determined for the purpose of applying these allocation limits in accordance with that direction. Relevantly the allocation limits provide that no person or specified group of persons may, as a result of the allocation of a spectrum licence, use:

- (a) more than an aggregate of 60 MHz of the relevant band in each metropolitan area (whether or not at the same location in that metropolitan area);
- (b) more than an aggregate of 80 MHz of the relevant band in each regional area (whether or not at the same location in that regional area).

Further detail about the allocation limits and the rules for determining existing holdings for the purpose of applying the allocation limits can be found in the explanatory statement to the 3.6 GHz spectrum limits direction.

Division 2 Associates, specified group of persons and affiliations

Section 13 Meaning of *associate* and *specified group of persons*

In the definition of *associate*, an individual is taken not to be a member in common between 2 or more groups that are comprised of a person (*relevant person*) and the associates of that relevant person where all of the following apply:

- (a) the individual is providing services as a company secretary of one or more related bodies corporate of the relevant person in each of the groups;
- (b) the individual is not providing those services as an employee of or direct contractor to any of those related bodies corporate, but as an employee of or contractor to a person that:
 - (i) is not in any of the groups; and
 - (ii) has been engaged by each of those related bodies corporate, under a contract or other legally binding arrangement, to provide the services of a company secretary;
- (c) the individual is not a director of any of those relevant persons or related bodies corporate;
- (d) each of those related bodies corporate is incorporated outside Australia.

Subsection 4(1) of the 3.6 GHz limits direction defines specified group of persons as associates for the purpose of the application of the allocation limits. This section adopts these definitions in largely the same terms for the purpose of complying with the 3.6 GHz spectrum limits direction.

The inclusion of parties to a 'relevant agreement' as associates covers situations, formal or informal, written or oral, partly formal and partly informal, where one person (the first person) has agreed that another person would acquire spectrum in their own right, but for the benefit of the first person. Roaming services agreements between mobile telecommunications carriers, and agreements between carriers provided for under the *Telecommunications Act 1997* or Part XIC of the *Competition and Consumer Act 2010*, are not included in the meaning of 'relevant agreement' for the purposes of the definition of 'associate'.

Subsection 4(1) of the 3.6 GHz spectrum limits direction defines ***a specified group of persons*** as an applicant for a spectrum licence and all the applicant's 'associates'. A specified group of persons can be any 2 or more groups of a person, and all associates of that person, that have at least one member in common. The Determination adopts these definitions largely for the purpose of complying with the 3.6 GHz spectrum limits direction. An ***associate*** of a person includes:

- > if the person is a company – a director of the company, certain shareholders in the company, and a related body corporate of the company;
- > if the person is an individual – the person's spouse or de facto partner, a company of which the person is a director, or a company in which the person has a certain level of shareholding;
- > in any case, a person that is a party to a 'relevant agreement' with the person, as defined under subsection 11(2), in the same way that it is defined in the 3.6 GHz spectrum limits direction, for use or acquisition of a spectrum licence in relation to part of spectrum referred to in the 3.6 GHz re-allocation declaration.

Section 14 Affiliation between applicants or bidders

This section sets out when two applicants or bidders will be taken to be affiliated if the applicants or bidders are in the same specified group of persons. The definition of specified group of persons means that 2 applicants or bidders will be affiliated if they have an associate in common. An example would be where two applicants or bidders have a director in common. However, it specifically excludes an individual being taken to be a 'member in common' if that individual is providing services as a company secretary for one or more related bodies corporate incorporated outside of Australia where those services are not provided as a employee or direct contractor to any of the related bodies corporate.

This section is recursive, so that more than two applicants or bidders may be taken to be in a single specified group of persons for the purpose of the allocation limits. This is included in order to comply with section 5 and the definition of specified persons in the 3.6 GHz spectrum limits direction.

Section 15 Affiliation between applicants or bidder and existing relevant band licensee

This section provides that an applicant or bidder is ***affiliated*** with an existing relevant band licensee if the applicant or bidder and the existing relevant band licensee are in the same specified groups of persons. The definition of specified group of persons means that an applicant or bidder is affiliated with an existing relevant band licensee if the applicant or bidder and the existing relevant band licensee have an associate in common.

Section 16 Information relevant to considering whether applicants, bidders or existing relevant band licensees are affiliated

This section sets out the matters that the ACMA must take into account in considering whether an affiliation exists between two or more applicants or bidders, or whether one or more applicants or bidders are affiliated with one or more existing relevant band licensees as defined in the 3.6 GHz spectrum limits direction, namely, in regard to the documents and information given by applicants and bidders under the Determination. The ACMA may have regard to any other information it considers relevant in determining information about affiliations.

PART 3—CONFIDENTIALITY

Section 17 Meaning of confidential information

The definition of the term ***confidential information*** forms the basis of the confidentiality rules imposed by this Part. The definition includes information that could give rise to collusion or price-

signalling (both deliberate and inadvertent) if disclosed, such as information about a bid, or about proposed bids of an applicant or bidder, an applicant's or bidder's bidding strategy, or the amount an applicant or bidder is willing to pay for a lot or group of lots. It also includes documents an applicant or bidder has given to the ACMA for the purpose of the auction (e.g., their application form) and information provided to a bidder by the ACMA for the purposes of participating in the auction. More generally, the definition also covers any information that, if disclosed, could be expected to affect or be capable of affecting another applicant or bidder's bids, proposed bids or bidding strategy or the outcome of the auction.

Section 18 Obligation to not disclose confidential information

This section provides that an applicant or bidder must not disclose its confidential information to any person, other than in the case of specific exceptions listed in the section. This confidentiality obligation also applies to a related person of an applicant or bidder who has knowledge of the applicant's or bidder's confidential information.

Although the disclosure of confidential information is prohibited by this section, it is acknowledged that, in order for an applicant to effectively participate in the allocation process (and comply with other requirements), there are certain limited circumstances in which confidential information may need to be communicated to another person. Subsection 18(2) sets out the exceptions to the prohibition on the disclosure of confidential information. These include where an applicant or bidder discloses confidential information to a related person of that applicant or bidder, or to an advisor or consultant for the purpose of obtaining advice relating to the allocation process or obtaining finance to purchase spectrum licences in the allocation process. It also includes where an applicant or bidder discloses confidential information to the ACMA, or as authorised by the Determination, or as required by law.

Information that would otherwise fall within the definition of confidential information but is already publicly available will also be able to be disclosed.

Section 19 Duration of confidentiality obligation

In order to protect against collusion and price-signalling (whether deliberate or inadvertent) at all stages of the allocation process, the rules on confidential information apply to each applicant, bidder and related person with knowledge of the applicant's, or bidder's, confidential information. This section sets out when, after the allocation process, the confidentiality obligations for an applicant or bidder, and for a related person of an applicant or bidder, will end. An applicant, or bidder and their related persons, will not be released from the obligation to not disclose confidential information until one of the circumstances set out in this section takes place (i.e., the bidder is notified that the bidder is not a winning bidder under paragraph 56(1)(a), the applicant (who has withdrawn) is notified under subsection 57(1) that the applicant's confidentiality obligation is at an end, or the bidder is asked to make a statement as a winning bidder under section 58.

Section 20 Reporting breach of confidentiality

Given its potential impact on the outcome of the auction process, and to ensure a fair and robust auction, it is important that the ACMA is made aware of any breach of the rules on confidentiality as soon as possible. This section requires applicants and bidders, and their related persons and contractors, to notify the ACMA in writing as soon as possible after becoming aware of a breach of the confidentiality rules, and no later than 2 working days after becoming aware of the breach. This applies where the applicant or bidder, or related person or contractor, of the applicant or bidder, discloses the confidential information or receives confidential information of another applicant or bidder.

Section 21 Notice of breach of confidentiality

This section states that where the ACMA has reason to believe there has been a breach of the rules regarding the disclosure of confidential information by an applicant or bidder (or a related person of an applicant or bidder) the ACMA must advise the applicant or bidder of that fact and ask it to make submissions to the ACMA on this matter. The ACMA must also set a deadline for the provision of any submissions that is no more than 5 working days after the date of the request.

The ACMA is not obliged to tell the applicant or bidder of its belief before the auction period ends, but must do so as soon as practicable after the auction period ends.

Section 22 Deed of confidentiality required from related persons and contractors

A deed of confidentiality represents an explicit commitment on the part of related persons of an applicant or bidder that they will comply with the rules regarding the disclosure of confidential information throughout the allocation process. It is important that individual employees of an applicant or bidder (or of a related body corporate that provides services to the applicant or bidder) who have knowledge of their employer's confidential information understand the importance of confidentiality in this process and acknowledge this through signing a confidentiality deed.

The section states that a deed of confidentiality will be required from related persons who are also employees and relevant contractors of the applicant or bidder, or employees of a related body corporate of the applicant or bidder, that provides services to the applicant or bidder. The obligation to complete a deed of confidentiality under this section will not extend to a director or company secretary of an applicant or bidder, unless the director or secretary is also an employee of the applicant or bidder.

Where a related person of an applicant gains knowledge of the applicant's confidential information prior to the application deadline, a deed of confidentiality from the related person must be submitted to the ACMA by the application deadline.

PART 4—PROCEDURES BEFORE AUCTION

Division 1 Preliminary

Section 23 Auction manager

This section provides that the ACMA must appoint a member of the ACMA, a member of the ACMA's staff, or an officer or employee of another Commonwealth authority, whose services are made available to the ACMA, to manage the auction (**the auction manager**). This appointment will be made in writing. The auction manager will facilitate and manage the auction conducted under the Determination.

In conducting auctions under a Determination made under section 60 of the Act, it has been a long standing practice of the ACMA to appoint, as an auction manager or auctioneer, a member of the ACMA's staff holding a particular role. Generally, this has been the manager of the team responsible for spectrum licence allocation, who is employed at Executive Level 2 under the *Public Service Act 1999*. The ACMA expects to continue this policy for the auction process established by the Determination.

Section 24 Setting application fee

This section provides that the ACMA must set an application fee prior to inviting applications for the auction. This amount set will be included in a notice to advertise the auction and must be paid as part of a valid application.

Section 25 Application fee not refundable

This section states that the application fee to be paid under the Determination as part of the application requirements will not be refunded to an applicant or bidder under any circumstances.

Division 2 Advertising auction

Section 26 Advertising of auction by the ACMA

This section provides that the ACMA must publish a notice on its website (www.acma.gov.au) inviting interested persons to apply to the ACMA to participate in the auction. The notice will specify the spectrum to be allocated and will describe in general terms how the allocation will proceed. It will also inform prospective applicants how they may obtain the applicant information package (AIP) that will explain the allocation process in greater detail.

The deadlines for lodging the application form and associated documentation (**application deadline**) and eligibility nomination form and eligibility payment and/or deed of financial security (**eligibility deadline**) required to participate in the allocation process will also be included in the notice.

This section also notes that if there are any changes to information in the notice, the ACMA must publish another notice on its website with details of the change. Subsection (3) provides that the ACMA may also publish the information provided in the advertisement, and other information about the auction, by other means.

Section 27 Applicant information package

The AIP is intended to give prospective participants the key information they need to decide whether to participate in the allocation process. This section specifies the information that the AIP will contain. The AIP will include the Determination, the Marketing Plan, there-allocation declarations, and the 3.6 GHz spectrum limits direction, which are the key instruments that provide the legal basis for the allocation process.

The AIP will provide information needed for a person to apply to be registered as a bidder, participate in the auction or assignment price allocation, and be allocated and issued spectrum licences. All forms and documentation required for an applicant to apply and be registered to participate in the allocation will be provided. The section also advises that the eligibility deadline is the last time for withdrawal from the auction.

To assist interested parties to better understand the contents of the AIP, this package will include a covering paper which will set out a concise summary of how the allocation will take place as well as any other relevant information. This document is referred to in the Determination as the 'guide to the auction' (paragraph 27(1)(e)).

The ACMA must publish the AIP on its website. A notice will also be published giving details of any subsequent changes made to the AIP after initial release.

Section 28 Value of initial eligibility points, lot ratings, minimum spectrum requirements and starting prices

This section provides that the ACMA must set:

- > the dollar value of each initial eligibility point for the auction;
- > the lot rating for lots of each product;
- > the options for the minimum spectrum requirement, in lots, that an applicant may select for lots of a product in the auction; and
- > the starting price for the lots of each product in the auction.

A minimum spectrum requirement (**MSR**) may be nominated by the bidder on its eligibility nomination form. MSR is the minimum number of lots of a product that the bidder wishes to be allocated. If a bidder chooses to nominate a MSR and is not allocated at least this minimum number of lots at the end of the primary stage, the bidder cannot continue to the next stage of the auction and will not be allocated the lots. If there is one unallocated lot as the result of any bidder not reaching their MSR, that lot will be considered unallocated and be offered in the secondary stage.

After setting each of these amounts, the ACMA must approve an application form and eligibility nomination form to be completed by applicants as part of the registration process. The ACMA must publish each amount set under this section, and the approved application and eligibility nomination forms, on its website as soon as practicable after the ACMA publishes a notice of the auction under subsection 26(1).

The eligibility nomination form must be used by applicants to nominate the number of lots of each product wanted by an applicant at the starting price (start demand) to be able to calculate the number of initial eligibility points they wish to use from the first round of the auction. The auction manager will include this information in the auction software as the start demand for each bidder prior to Round 1 of the auction. It will be necessary for applicants to know the value of lot ratings and starting prices set under section 28 in order to calculate the number of initial eligibility points they need to bid on spectrum they wish to acquire. The ACMA must ensure that the approved eligibility nomination form includes a guide to calculating the number of initial eligibility points to be nominated by an applicant.

The starting price is equivalent to the reserve price for the lots of each product. It will not be possible within the auction system for an applicant to place a bid for an amount below the starting price. Starting prices relate to the spectrum access charges determined under Division 2 of Part 6 of the Determination and therefore, paragraph (d) of this section is disallowable under section 42 of the LA.

Eligibility points will also be used to apply the auction activity rules that will enable each bidder to bid flexibly on its most profitable package in each auction round. Each registered applicant will be able to bid on any package of lots, where the total eligibility points for the package is the same as, or smaller than, their initial eligibility points. However, if an applicant chooses to bid on a smaller package, the total number of eligibility points of that package (also equal to the total lot ratings for lots comprising that package) will become their new eligibility points for the next round. When a bidder reduces their eligibility points, this will constrain the size of future packages that can be bid on. Further information about bidding constraints is discussed in Schedule 1 below.

Division 3 Application to participate in auction

Section 29 Making an application

To take part in the auction, a person must first apply to the ACMA to be registered as a bidder. This section sets out the required documents and forms that an applicant must submit, and requires those documents and forms to be accompanied by the application fee. For an application to be considered valid, applicants must do the following before the application deadline:

- > give the ACMA a completed application form;
- > give the ACMA a signed deed of acknowledgement completed by the applicant, which specifies that the applicant agrees to be bound by the terms of the Determination;
- > give the ACMA a signed deed of confidentiality completed by the applicant; and
- > pay an application fee set by the ACMA.

After the application deadline and before the eligibility deadline, the applicant must also give the ACMA a completed eligibility nomination form which:

- > specifies the number of lots of each product wanted by the applicant as valid start demands of the applicant for the first clock round of the primary stage, at the starting price for the lots of the product; and
- > specifies the initial eligibility points of the applicant, based on those specified start demands; and
- > in relation to each product, either does not select a minimum spectrum requirement, or selects only one option as the minimum spectrum requirement, for the lots of each product; and
- > make an eligibility payment of an amount determined in accordance with section 38 to the ACMA on behalf of the Commonwealth, or give the ACMA on behalf of the Commonwealth a deed of financial security for the amount, or a combination of both;

Blank copies of the application form, eligibility nomination form and the deeds required will be provided in the AIP.

Instructions on how to lodge documents are in section 7. An applicant may also lodge any updated document at any time prior to the relevant deadline for that document (either application deadline or eligibility deadline), but not afterwards.

If an applicant has not submitted a completed eligibility nomination form or made an eligibility payment or given a deed of financial security (or a combination of the previous two items) to the ACMA by the eligibility deadline, the applicant is taken to have withdrawn its application.

Section 30 Start demand validity rules for application

For the purposes of making a valid application, start demand of an applicant for lots of a product is valid if both the total size of the lots of the product for the start demand does not exceed the allocation limits that apply in relation to the applicant and the relevant product and the number of lots for the start demand of the product is not greater than the supply of the product.

Section 31 Applicants to notify ACMA if application information incorrect

This section requires an applicant to provide the ACMA with correct information, if it becomes aware that information in its application has changed or is incorrect. The auction manager may correct the information in the application if the auction manager is satisfied that the information is incorrect, such as where it contains a clerical error or an obvious mistake or omission.

Section 32 Applicant to make statutory declaration

To ensure that affiliated applicants do not participate in the auction as separate bidders, the ACMA has included procedures to identify affiliated applicants before the commencement of the auction. This provision sets out the requirements that will assist the ACMA to identify whether any two or more applicants are affiliated.

After the application deadline, the ACMA will provide each applicant with a list of all other applicants, and the persons those applicants have identified as their associates. The information distributed will be based on details provided as part of each person's application. The application form includes a requirement for applicants to provide information about themselves as well as their associates.

The ACMA will ask each applicant to identify from the list provided by the ACMA whether they are affiliated with any other applicant or an existing relevant band licensee. Under this section, applicants must then make a statutory declaration to the ACMA stating whether they are affiliated with another applicant or an existing relevant band licensee, and if so, giving details of that affiliation. The ACMA will state a deadline by which the statutory declaration must be received, which will be at least five working days after the date of the ACMA's request.

Where the ACMA is satisfied that an affiliation exists between two or more applicants, the applicants will be required to choose one of the options available under section 34 before their application(s) will be considered further.

Section 33 Failure to give statutory declaration

This section provides if an applicant fails to provide a statutory declaration in accordance with section 32 the applicant is taken to have withdrawn from the auction. They will not be entitled to re-apply or take part in the auction, and will not be allocated spectrum under the Determination.

Section 34 Procedure if ACMA satisfied applicants affiliated

This section sets out the options available to a group of two or more applicants where the ACMA is satisfied that they are affiliated. The aim of this section is to assist applicants that are affiliated by providing them with a range of options that they may use to resolve any affiliation so as to enable their participation in the auction.

Under this section, the ACMA must write to each affiliated applicant and explain the reasons why it considers them to be affiliated. The ACMA must also tell all affiliated applicants of the options available to them under this section. Affiliated applicants are required to notify the ACMA in writing within ten working days of receiving notification from the ACMA of which option they propose to take. The options available to affiliated applicants under this section are:

- (a) to withdraw the applications of all the affiliated applicants and submit a new application, as a single new applicant, under section 35; or
- (b) to withdraw the applications of all but one of the affiliated applicants.

Under this section, the ACMA will consider all of the affiliated applicants to have withdrawn their applications if the applicants do not respond to the ACMA within ten working days of the notification. An affiliated applicant is also taken to have withdrawn if it is one of a remaining group of two or more affiliated applicants who have not informed the ACMA of their intention to withdraw.

Section 35 Requirements for new application

This section allows one or all of a group of affiliated applicants who have withdrawn their applications under subsection 34(1) to make a new application as a single applicant. It sets out the process and timeframe for lodging a new application. A new application made under this section must be accompanied by payment of an additional application fee. New applications can only be lodged by a body corporate whose only members are one or more of the group of affiliated applicants.

New applicants will have ten working days from the time that they are notified of being an affiliated applicant to submit a completed application form and pay the application fee to the ACMA.

After receiving the application form and fee, the ACMA will give each applicant, including the new applicant, updated details of all other applicants who have not withdrawn, and their identified associates.

New applicants will then have three working days (or a longer period if the ACMA agrees) from the time they are given the updated details of all applicants and their associates to submit:

- > a completed deed of acknowledgement;
- > a completed deed of confidentiality form; and
- > a completed statutory declaration stating that the new applicant is not affiliated with any other applicant in the updated list of applicants and stating whether the new applicant is affiliated with an existing relevant band licensee.

The new applicant must also give the ACMA a completed eligibility nomination form, eligibility payment or deed of financial security or a combination of both by the eligibility deadline (or a later

time if the ACMA agrees to a longer period). If these documents are given to the ACMA by email or fax, then the original document(s) must also be received by the ACMA within three working days of the deadline (unless the ACMA agrees to a longer period).

This section is intended to provide an opportunity for affiliated applicants to participate in the auction as a single bidding entity in a manner that will ensure that the allocation limits expressed in section 12 are not exceeded.

Section 36 Procedure if ACMA satisfied applicant affiliated with existing relevant band licensee

If the ACMA is satisfied that an applicant is affiliated with an existing relevant band licensee, the ACMA must, in writing notify the applicant and tell it the basis on which the ACMA is satisfied the applicant is affiliated with the existing relevant band licensee.

Where the ACMA is satisfied that an applicant is affiliated with an existing relevant band licensee, the applicant's start demand for lots of a product will be reduced by the number of lots necessary to ensure that start demand does not exceed the applicant's allocation limits applicable to the product. For the purpose of applying the allocation limits, the lots in the two Perth products, Perth lower band product and Perth upper band product, are treated as lots within one combined Perth products. If, applying this rule, the number of lots of the applicant's start demand are reduced to zero for all products, the applicant will be taken to have withdrawn its application.

The ACMA must tell an applicant if its start demand is reduced through this process. The processes under this section must not be undertaken until the process, if applicable, under sections 34 and 35, are completed.

Division 4 Initial eligibility points, minimum spectrum requirements and financial security

Section 37 Initial eligibility points and selecting minimum spectrum requirements

This section clarifies that the maximum number of initial eligibility points that an applicant may specify in its completed eligibility nomination form is the total of the eligibility points of all lots of each product (with the two Perth products being treated for this purpose a combined Perth product) up to its allocation limits. Further, if the applicant's start demand for lots is reduced in accordance with subsection 36(2) (due to start demand exceeding the applicant's allocation limits when an affiliation with one or more existing relevant band licensee is taken into account), the applicant's initial eligibility points will be reduced to account for the reduction in start demand. However, this will not affect the calculation of the amount required to be paid or secured in accordance with subsection 38(2).

The minimum spectrum requirement for lots of each product to be auctioned that an applicant may select in its completed eligibility nomination form are those set by the ACMA under paragraph 28(1)(c). If a selection is not made for a product, the applicant is taken to have no minimum spectrum requirement for the lots of a product in those bands.

Section 38 Eligibility payment or deed of financial security required for initial eligibility points

An applicant must pay an eligibility payment, or provide a deed of financial security, or a combination of both, by the eligibility deadline. The amount to be paid or secured, in relation to an applicant, is calculated by multiplying the specified number of initial eligibility points nominated by the applicant in its completed eligibility nomination form by the dollar value of initial eligibility points set by the ACMA.

A situation may arise where the applicant makes an eligibility payment or gives a deed of financial security (or both) for an amount which is less than the amount required to secure lots they have

nominated. Where this occurs the ACMA will notify the applicant. Applicants have until the eligibility deadline, or three working days from the date they are notified by the ACMA of the underpayment, (whichever is later), to provide the ACMA with an additional eligibility payment or deed of financial security to make up the balance to secure the number of preferred lots that they have nominated.

If such an underpayment exists after this period, the ACMA will reduce the applicant's initial eligibility points and start demands to a level that is commensurate with the amount of eligibility payment made or the deed of financial security given (or both). This section sets out details about how the ACMA will calculate such a reduction and provides that the ACMA must tell an applicant in writing if the ACMA has removed some initial eligibility points and start demand, or if the applicant is taken to have withdrawn its application, as a result of this section.

A deed of financial security given to the ACMA must be executed by an authorised deposit-taking institution within the meaning given by the *Banking Act 1959* or a person authorised to carry on business in Australia as an insurer under the *Insurance Act 1973* or a Lloyd's underwriter authorised to carry on insurance business under Part VII of the *Insurance Act 1973*.

An applicant is considered to have withdrawn if the applicant fails to make an eligibility payment or give a deed of financial security before the eligibility deadline or the ACMA is not satisfied that the person executing a deed of financial security is a person mentioned in the previous paragraph. The ACMA must tell the applicant if it is taken to have been withdrawn.

If a deed of financial security is given to the ACMA by email or fax, the original document must also be received by the ACMA within 3 working days after the eligibility deadline, or a later time agreed by the ACMA, for the deed to be considered to have been given to the ACMA.

Division 5 Withdrawal of applicant

Section 39 Withdrawal of applicant

This section describes how and when an applicant may withdraw from the allocation process. It also describes the consequences of withdrawing an application.

An applicant can withdraw from the allocation process any time before the eligibility deadline by giving the ACMA notice in writing. An applicant who has withdrawn will not be re-admitted to the auction and cannot be allocated spectrum under the Determination.

Any eligibility payment amount paid by an applicant who withdraws before the eligibility deadline, or that is taken to have withdrawn under other sections of the Determination, will be refunded subject to section 75 and section 77 of the Determination. Under section 25 of the Determination, any application fee paid by an applicant who withdraws will **not** be refunded.

Division 6 Registration of bidders

This Division sets out the obligations on the ACMA to maintain a register of bidders and explains the procedure for bidders to be registered. It also describes the information that bidders will be provided with about the auction system once they are registered and explains that the ACMA will give registered bidders an opportunity to familiarise themselves with using the auction system as a bidder prior to the auction.

Section 40 Register of bidders

This section specifies that the ACMA must maintain an electronic register of bidders and sets out the obligations on bidders and the ACMA to keep details on the register up-to-date. It also provides a list of details that the register must contain for each bidder.

Bidders must inform the ACMA if they become aware of any change to these details and provide updated information (see section 42). The ACMA must update the register accordingly.

Section 41 Registration process

This section sets out the requirements that must be satisfied in order for a person to be registered as a bidder. In order for an applicant to be registered as a bidder it must have:

- > made a valid application
- > made an eligibility payment or given the ACMA a deed of financial security or a combination of the two, in accordance with the requirements of section 38.

Applicants will only become a bidder when their details are entered into the register. This provision states that the ACMA must not register a bidder until after the eligibility deadline has passed.

This section also explains that the ACMA must notify an applicant that it is registered as a bidder after the eligibility deadline. At that time, the ACMA will provide bidders with the contact details for the ACMA, and a copy of their information recorded in the register for the bidders. Bidders will also receive information and tools to access and use the auction system, as well as information explaining how to submit an offline bid if they are unable to use the auction system during the auction.

The information provided to a bidder under this section for the purpose of participating in the auction is classed as **confidential information** under section 17.

Section 42 Bidders to notify ACMA if register incorrect

The section explains that a bidder has an ongoing responsibility to tell the ACMA if any of the information about the bidder or its associates on the register of bidders is incorrect. If information is incorrect, the bidder must immediately give the ACMA the correct information.

The auction manager may correct the information on the register if the auction manager is satisfied that the information is incorrect, such as where it contains a clerical error or an obvious mistake or omission.

Division 7 Preparation for bidding and scheduling rounds of the auction

Prior to taking part in trial auctions, bidders will have the opportunity to view a presentation that will familiarise them with the online interface of the auction system. Bidders will also receive a user guide to accessing and using the auction system.

Section 43 Preparation for bidding

This section provides that the ACMA will give each bidder an opportunity to trial the auction system prior to the start of the auction.

Section 44 Security of auction

This section sets out obligations on bidders to ensure that the security of the auction system is maintained. A bidder must keep secure any information and items provided to the bidder for the purpose of accessing the auction system. If such items are lost or stolen, a bidder must immediately notify the ACMA.

Section 45 Auction rounds

This section sets out the requirement to schedule the rounds of the auction for the primary stage, secondary stage and assignment stage. The first clock round of the primary stage of the auction starts on the date and time for that clock round set by the auction manager under subsection 46(1).

Section 46 First and second clock rounds

This section outlines the requirement that, after the eligibility deadline, the auction manager must set the start date and start time of the first and second clock rounds of the primary stage of the auction.

The auction manager must notify bidders of the start date and start time of the first and second clock rounds of the primary stage at least 10 working days before the start date of the first clock round.

PART 5—AUCTION PROCEDURES

Division 1 Procedures to be applied

Section 47 Auction stages

This section outlines details of the three stages of the auction, primary stage, a secondary stage (if required) and an assignment stage.

The primary stage is made up of the following components. Firstly, before the first round of the auction the ACMA enters into the auction system the number of lots of the product specified by the bidder in its completed eligibility nomination form (start demand). The ACMA then conducts one or more auction clock rounds for the making of bids on lots of a product. When all the clock rounds have been completed and the final demands for the lots of each product allocated to a primary winner and the associated primary prices have been determined, the results are posted.

The secondary stage simple clock auction is required to auction single lots of a product from the primary stage. That is, a lot will only be offered in the secondary stage if it is a single unallocated lot in that product. If no single lots remain unallocated from the primary stage, the secondary stage is not required. The allocation limits continue to apply in the secondary stage. To minimise strategic bidding, a bidder who has selected the MSR for a product and does not win at least that number of lots of spectrum of that product during the primary stage, will not be permitted to participate in the secondary stage. Eligibility points are not applicable to the secondary stage, since there is no activity rule or ability to switch demand between products.

The assignment stage is made up of one or more assignment rounds for the making of bids for the assignment of frequency ranges to lots of a product that were allocated in the primary stage or secondary stage; and after all the assignment rounds are completed, the winning assignment bids for the frequency ranges assigned to the lots of each product allocated to a primary winner or secondary winner and the associated assignment prices are determined.

Section 48 Procedures if only one bidder

This section relates to the situation where there is only one bidder for the auction. The ACMA must notify the bidder as soon as reasonably practicable after the eligibility deadline that it is the only bidder, and that the procedures in section 48 apply. Following bidder notification, the ACMA will conduct one clock round in the primary stage using the auction system in which the bidder may make a bid for the lots of each product (subject to its eligibility points). As soon as possible after the primary stage is completed, the assignment stage will be conducted to enable the bidder to indicate the frequency ranges the bidder wishes to have assigned. The assignment prices in this case will be zero—see subclause 8(2) of Schedule 3.

Section 49 Rounds of the auction

This section specifies that the rounds of each of the primary stage, secondary stage (if required) and assignment stages will be conducted in accordance with the rules set out in the Schedules to the Determination.

The clock rounds for the primary stage of the auction are to be conducted in accordance with the rules in Schedule 1. The rounds for the secondary stage of the auction, if required, are to be conducted in accordance with the rules in Schedule 2. The assignment rounds for the assignment stage of the auction are to be conducted in accordance with the rules in Schedule 3.

Section 50 Auction manager's discretion to accept bids

Section 50 recognises that during the auction, unanticipated circumstances may arise that prevent a bidder from being able to use the auction system to submit a bid for a round in the primary stage or secondary stage or assignment stage. For example, a sudden power blackout may cut a bidder's computer access to the auction system. This section gives the auction manager the discretion to permit a bid to be submitted by an alternative method. Bidders will receive information about how they can submit a bid if they are unable to use the auction system once they are registered under section 41.

Under subsection 50(2), the auction manager has discretion to permit a bidder to submit a bid after the bidding period for a round has ended, but only if satisfied that technical or communication problems have prevented the bidder from submitting a bid during the bidding period. Bids that have been submitted in this way will be regarded as valid bids made during the bidding period for the round for the purposes of calculating the results of a round just ended. A bid cannot be submitted after information about the outcome of a round has been given to bidders, that is, during or after the results period for the round.

Section 51 Action that auction manager may take in exceptional circumstances

Exceptional circumstances may arise that affect the auction. If the auction manager is satisfied that this has occurred, subsection 51(1) gives the auction manager permission to take a range of actions to overcome these circumstances. These actions can include stopping the current round of the auction and restarting a round, cancelling the results of one or more rounds and restarting the auction from the point before those rounds, restarting the auction from the first round, or stopping the auction. These actions could occur in clock rounds in the primary stage or secondary stage or assignment rounds in the assignment stage.

Subsection 51(2) also sets out two examples of exceptional circumstances that could permit the auction manager to take discretionary action under this provision, including significant technical difficulty with the auction system. The examples given are not exhaustive and do not preclude other circumstances from being regarded as exceptional.

Division 2 Affiliations during auction

Section 52 Affiliation between bidders during auction period not permitted

This section provides that a bidder must not be affiliated with another bidder during the auction period (as defined in section 4). If the ACMA is satisfied that a breach of this provision has occurred, the ACMA may take action under the enforcement provisions in section 75.

Section 53 Requirement to report affiliation

Under this provision, a bidder is obliged to immediately tell the ACMA in writing if it the bidder believes that it may be affiliated with another bidder during the auction period, noting the identity of the other bidder and the nature of the affiliation.

Section 54 Auction continues despite possible affiliation

This section states what happens if the ACMA becomes aware during the auction period that two or more bidders may be affiliated, or that a bidder may be affiliated with an existing relevant band licensee. The auction will proceed normally and any bidders who may be affiliated are permitted to continue to participate.

Section 55 ACMA consideration of affiliation

This section explains what steps the ACMA will take if it becomes aware that two or more bidders are affiliated, or that a bidder is affiliated with an existing relevant band licensee, during the auction period.

During or after the auction period, the ACMA will consider whether it has reason to believe that the bidders, or bidder and existing relevant band licensee, were affiliated during the auction period. If the ACMA forms the belief that an affiliation existed during the auction period, it must write to the affiliated bidders, notifying them of this fact and informing them of the basis on which it considers them to be affiliated.

If a bidder gave the ACMA information under section 53 about a possible affiliation and the ACMA does not consider that the bidders were affiliated during the auction period, then the ACMA must also notify the bidders of that decision.

PART 6—PROCEDURES AFTER AUCTION

This Part describes the procedures and processes that will apply after the close of the auction. It includes details of how auction results will be confirmed, as well as outlining licence payment procedures before issuing spectrum licences.

Division 1 Confirmation of auction results

This Division outlines the procedures to be followed by the ACMA and bidders to enable the confirmation of auction results.

Section 56 Notice and refunds to unsuccessful bidders

This section sets out that the ACMA must, as soon as practicable after the auction, notify each unsuccessful bidder that they have not won any spectrum and that their confidentiality obligations under section 18 have ended. The ACMA must refund any eligibility payment made by the unsuccessful bidder within a maximum period of six months of notifying the bidder that they are unsuccessful, except where the ACMA has decided to retain the eligibility payment under section 75 due to a breach of the auction rules.

Section 57 Notice and refunds to withdrawn applicants

This section states that the ACMA must notify each applicant that withdrew, or was taken to have withdrawn, that they are no longer bound by the confidentiality obligations under section 18 as soon as practicable after the end of the auction period. This section also notes that withdrawn applicants who have made eligibility payments will have these payments refunded no later than six months of this notification being given, except where the ACMA has decided to retain the eligibility payment under section 75 due to a breach of the auction rules.

Section 58 Winning bidder to make statement about affiliations

The ACMA is required to notify each winning bidder of the identity of all other winning bidders and all existing relevant band licensees as soon as practicable after the end of the auction period. Each winning bidder is then required to provide the ACMA with a statement saying whether they are affiliated with any other winning bidder or existing relevant band licensees and if so, the details of that affiliation. This section also sets out that the ACMA must state a deadline for the receipt of this statement that is no less than five working days after the date of request. It is noted that giving false or misleading information in such statements constitutes a serious offence under the *Criminal Code*.

This section ensures that the ACMA is able to ensure that no spectrum licences are issued under the Determination that would cause the applicant to exceed the allocation limits.

Section 59 Notification that winning bidders are affiliated

This section states that the ACMA must notify winning bidders if it is satisfied that they became affiliated after (but not during) the auction period. This notification will provide details of the basis on which that decision has been made.

Section 60 Consequences of affiliation between bidders

If the ACMA notifies two or more winning bidders under section 59 that it is satisfied the bidders are affiliated, the ACMA must not issue spectrum licences to the bidders that would exceed the allocation limits applicable to a product (other than the two Perth products) or applicable to the Perth combined products. As noted above, for the purpose of applying the allocation limits the ACMA considers the lots in the two Perth products as one combined product range.

Winning bidders who have been notified that the ACMA is satisfied that they formed an affiliation after the auction period remain subject to the allocation limits applicable to the relevant product set out in section 12. This means that the ACMA may only issue licences to those affiliated winning bidders up to the allocation limits applicable to the relevant product. For the avoidance of doubt, this section applies only to two or more winning bidders whose affiliation first occurred after the end of the auction period. If an affiliation between bidders occurred during the auction period this would be a breach of the requirements of section 52 of the Determination and the ACMA may take action under section 75 of the Determination.

This section has the effect that the ACMA will combine the total spectrum won by affiliated winning bidders. Where the issue of a spectrum licence for that combined spectrum would exceed the allocation limits, licences may only be issued up to the specified allocation limits applicable to the relevant product.

In these circumstances, affiliated bidders may provide a direction to the ACMA specifying how the spectrum is to be allocated between them within the allocation limits applicable to the relevant product. Such a direction must be given jointly by the affiliated bidders. If no direction is provided within five working days after the ACMA notified the bidders of the affiliation, the ACMA may, for any part of the spectrum where the lots won by the bidders exceed the allocation limits applicable to the relevant product, choose at its discretion how to allocate spectrum to each bidder up to the allocation limits. Any spectrum not allocated, because allocating it would be in excess of the allocation limits applicable to the relevant product, will be treated as unallocated. The winning bidders must pay the balance of the winning price for all the lots allocated, despite receiving a smaller allocation as a result of this section.

Section 61 Notification that winning bidder is affiliated with existing relevant band licensee

If the ACMA is satisfied that a winning bidder is affiliated with an existing relevant band licensee, the ACMA must notify the winning bidder in writing and tell it the basis on which the ACMA is satisfied the winning bidder is affiliated with the existing relevant band licensee.

If the ACMA makes a decision in relation to the affiliation of an existing relevant band licensee with a winning bidder that was notified previously under section 59, the ACMA must not notify the winning bidder about its affiliation with an existing relevant band licensee, until the procedures in section 60 have been completed in relation to the winning bidder.

Section 62 Consequences of affiliation with existing relevant band licensee

If the ACMA notifies a winning bidder, under section 61, that it is satisfied the winning bidder is affiliated with an existing relevant band licensee, the ACMA must not issue spectrum licences to the winning bidder that would exceed the winning bidder's allocation limits applicable to a product. A winning bidder who did not also receive a notice under section 59 may give the ACMA a direction specifying how spectrum is to be removed from the winning bidder's allocation of lots of the product

to meet the allocation limits. If two or more winning bidders received a notice under section 59 and each is also affiliated with an existing relevant band licensee, the winning bidders may jointly give a direction to the ACMA about how the spectrum is to be allocated between the winning bidders up to the allocation limits.

If no direction is given within five working days of the ACMA notifying the winning bidder, the ACMA may choose at its discretion how to allocate spectrum to the winning bidder, or each winning bidder, up to the allocation limits applicable. Any spectrum not allocated, because allocating it would be in excess of the allocation limits applicable to the relevant product, will be treated as unallocated. A winning bidder or winning bidders must pay the balance of the winning price for all the lots allocated, despite receiving a smaller allocation as a result of this section.

Division 2 Winning prices, payment and issue of spectrum licences

This Division outlines procedures for determining final payment amounts (spectrum access charges), the conditions of payment, and the issue of refunds, and is therefore made under section 294 of the Act and is disallowable under section 42 of the LA. The Division also details the timing for issuing of spectrum licences, when licences will commence, and the publication of auction results.

Section 63 Winning price and balance of winning price

This section describes how the winning price will be calculated for each winning bidder. After the auction, the ACMA will add the primary price, the secondary price (if any) and the assignment price (if any) for the lots allocated to the bidder in the auction to calculate the winning price. For a winning bidder, the balance of the winning price is the winning price minus any eligibility payment made by the bidder under subsection 63(2). The winning price is the total spectrum access charge fixed under section 294 of the Act payable by the licensee for the issuing of spectrum licences to the licensee.

Section 64 Results of the auction

This section describes what auction results are given by the auction manager to bidders.

After the winning bidders and winning prices are determined, the auction manager must tell each winning bidder the number of lots of each product allocated to the winning bidder, the frequency ranges assigned to the lots allocated to the winning bidder, and the winning price to be paid by the winning bidder for the lots allocated and frequency ranges assigned to the lots allocated.

After the winning bidders and winning prices are determined, the auction manager must tell all bidders the number of winning bidders in the auction and the frequency ranges for each product in relation to the lots allocated in the auction.

Section 65 Sufficient eligibility payment—issue of spectrum licence without further payment

This section provides that if the balance of the winning price is less than zero, the ACMA must refund that part of the eligibility payment that is in excess of the total of the winning price. The bidder is entitled to be issued a spectrum licence for each part of the spectrum allocated to the bidder without further payment.

If the balance of the winning price for any winning bidder is equal to zero, the bidder is entitled to be issued a spectrum licence for each part of the spectrum allocated to the bidder without further payment.

Section 66 Payment of balance of winning price

This section sets out the arrangements for notifying winning bidders of the balance of the winning price, where the amount is greater than the bidder's eligibility payment. It also sets out the time by which this payment must be made.

If the balance of the winning price is greater than zero, the ACMA must notify the winning bidder by registered mail of the balance owing. Any balance owing must be paid to the ACMA no later than 20 working days after the date of the notice. The date of the notice will be before the spectrum licences come into force.

Where the ACMA gives a revised notice to a winning bidder on or before the expiry of the 20 working days after the date of the original notice, the balance owing will be due no later than 30 working days after the date of the original notice. If the revised notice is provided after 20 working days after the date of the original notice, the due date for payment will be no later than 10 working days after the date of the revised notice.

Section 67 Issue of spectrum licence after payment of balance of winning price

This section provides that a winning bidder is entitled to be issued a spectrum licence for each part of the spectrum assigned to the lots allocated to it under the auction process only when the balance of the winning price has been paid by the winning bidder according to the procedure set out in section 66.

Section 68 Default

This section outlines the procedure if an applicant does not pay the full balance of the winning price for a spectrum licence or licences in accordance with subsection 66. In this case, the spectrum licence is not allocated to the winning bidder, but the allocation of spectrum licences to other applicants is not affected. The lots that would have been included in the spectrum licence allocated to the winning bidder if they had paid the balance of the winning price are taken to be unallocated spectrum under this provision. Where this occurs the ACMA may retain any eligibility payment made by the applicant or enforce a deed of financial security given by the applicant, in accordance with section 75.

Section 69 Publication of auction results

This section sets out that after the end of the auction period the ACMA must announce or publish the names of the winning bidders, the spectrum allocated to each winning bidder and the winning price paid, or to be paid, by each winning bidder.

PART 7—MISCELLANEOUS

This Part describes various miscellaneous matters that apply to the allocation by auction process, including the treatment of unallocated spectrum, enforcement procedures, and that the ACMA is not liable for acts or omissions under the Determination.

It also sets out information that the ACMA may obtain from applicants and bidders, as well as the treatment of information provided to the ACMA by applicants and bidders.

Section 70 Unallocated spectrum

Parts of the spectrum that are available in the auction but not allocated in the primary stage and are not allocated in the secondary stage (if any) may be later made available for allocation by a procedure to be determined by the ACMA.

Section 71 Bidders must not misuse auction system

This section provides that a bidder must only access and use the auction system in accordance with the information provided by the ACMA under paragraphs 41(2)(c) and 41(2)(d), which requires the ACMA to give the bidder certain information once they are registered to participate in the auction. A bidder must not attempt to interfere with, disrupt or damage the auction system, or use it to breach a law of the Commonwealth.

Section 72 ACMA may obtain information from applicants and bidders

The ACMA may wish to obtain information or documents from an applicant who becomes a bidder for a number of reasons, including for the purposes of determining whether any contravention of the Determination has occurred, or considering whether two applicants or bidders are affiliated.

If the ACMA has reason to believe that an applicant or bidder has information or documents that are relevant to the performance of any of the ACMA's functions or the exercise of its powers under the Determination, the ACMA may, by written notice, require the applicant or bidder to give to the ACMA, within the period and in the manner and form specified in the notice, any such information or to produce to the ACMA, within the period and in the manner specified in the notice, any such documents.

The ACMA may require the information or documents requested of an applicant or bidder under this section to make decisions which could have a significant impact on their participation in the auction. This provision includes a note pointing out that if a requirement in a notice given under this section is breached, including failure to provide available information or documentation when requested, the ACMA may take action under section 75 of the Determination.

The ACMA may vary any such notice given.

Section 73 Use of information and documents by ACMA

Under this section, the ACMA may use any information or documents it obtains in the performance of the ACMA's functions under the Determination for the purposes of the Determination, including disclosing or publishing information or documents as provided for in the Determination. The ACMA may also use the information or documents to perform its functions in relation to a spectrum licence to be issued, or issued, as a result of the allocation process under the Determination. The ACMA may keep a document obtained under this section for as long as necessary for the performance of any of its functions or exercise of its powers under the Determination or the Act.

The ACMA may also disclose information or documents as permitted by Part 7A of the *Australian Communications and Media Authority Act 2005*, or as otherwise authorised by law.

Section 74 ACMA to provide information to ACCC on request

This section requires the ACMA to provide specified information to the ACCC, where the ACCC has requested the information in relation to any applicant or bidder. Information that may be requested includes forms, and deeds submitted by an applicant prior to and during the allocation process, information about an applicant's affiliations, and information about any breach of confidentiality obligations. It also includes information about bidding during the auction and information about the outcome of procedures set out in Part 6.

Section 75 Retention of eligibility payment or enforcement of deed of financial security for breach of auction procedures

This section sets out the action that the ACMA may take for a breach of provisions of the Determination, such as the auction rules or related procedures. The ACMA may, on behalf of the Commonwealth, retain an eligibility payment paid, or enforce a deed of financial security given, by an applicant or bidder where it is satisfied that an applicant or bidder, or a related person of the applicant or bidder, or a contractor of the applicant or bidder, breached a provision of the Determination and that the breach affected or may have affected the outcome of the auction.

The ACMA may retain the eligibility payment or enforce the deed of financial security if the bidder is a winning bidder who failed to give the statement required under section 58 about affiliations with other bidders or the ACMA was satisfied that the bidder breached section 52 concerning bidders becoming affiliated during the auction.

The ACMA may also retain the eligibility payment or enforce the deed of financial security if a winning bidder failed to pay the balance of the winning price as required under paragraph 66.

The ACMA may also retain the eligibility payment or enforce the deed of financial security if the ACMA is satisfied that the applicant or bidder, or a related person of the applicant or bidder or contractor, of the applicant or bidder, breached the confidentiality obligations under section 18 after the end of the auction period (but before the confidentiality obligations came to an end), or if the applicant or bidder failed to comply with a requirement in a notice given under subparagraph 72(1), requiring the production of information or documents.

The ACMA must notify the applicant or bidder, in writing, of a decision under subsection 75 and the nature of the breach or failure, before the later of:

- (a) six months after the end of the auction period; and
- (b) six months after the day on which the breach or failure mentioned in subsection (1) occurred.

Any amount retained or obtained by the ACMA under section 75 is forfeited to the Commonwealth unless the Federal Court orders its return under section 77.

Section 76 Effect of retention on winning bidders

This section provides that if the ACMA makes a decision under subsection 75(1) to retain an eligibility payment or enforce a deed of financial security provided by a winning bidder then, despite sections 65 and 67, the ACMA must not issue a spectrum licence to the bidder, and the spectrum won by the bidder will be taken to be unallocated.

Section 77 Application to Federal Court for return of retained amount

This section provides that, where an applicant or bidder is notified by the ACMA of its decision to retain an eligibility payment or enforce a deed of financial security, the applicant or bidder may, within one year of receiving the notice, apply to the Federal Court for return of all or part of the eligibility payment or amount secured by a deed of financial security.

On application, the Court may:

- (a) if the Court is not satisfied that the applicant or bidder committed the breach identified in the notice given by the ACMA – order the return of all the amount retained by the ACMA; or
- (b) if the Court is satisfied that the applicant or bidder committed the breach, but considers that it would be disproportionate for the full amount to be retained – order the return of part of the amount retained by the ACMA.

This section does not enable the Federal Court to order that a spectrum licence be issued to an applicant or bidder. This section also does not remove any existing jurisdiction of a court.

Section 78 No liability of the ACMA, etc.

This section excludes the ACMA's, the auction manager's and the Commonwealth's liability in respect of damages or costs arising from any act or omissions of any person in relation to the auction procedures set out in the Determination.

Section 79 Other rights not affected

This section makes it clear that the Determination does not limit any right of action or remedy that the ACMA or the Commonwealth may have against any person.

Section 80 Auction manager may delegate functions and powers

The auction manager may delegate any of the auction manager's functions and powers under the Determination to either a member within the meaning given by the *Australian Communications and Media Authority Act 2005*; or a member of the ACMA staff that holds, or is acting in, an Executive

Level 1 or 2 position or an equivalent position; or is an SES employee or acting SES employee. The terms ***SES employee*** and ***acting SES employee*** are defined in the *Acts Interpretation Act 1901*.

Schedule 1—Rules for the primary stage of the auction

Schedule 1 to the Determination sets out the rules for the primary stage of the auction.

Part 1—Application and interpretation

Clause 1 Application of Schedule

Clause 1 provides that all lots of each product are the subject of the primary stage of the auction.

Clause 2 Interpretation

Clause 2 defines a number of key terms used throughout Schedule 1. These terms include clock round, increase bid, decrease bid, maintain bid, start demand, clock price and posted price.

The primary stage consists of a number of *clock rounds*.

At the start of each clock round, each bidder has a *start demand* for lots of each product (which can include a start demand of zero). A bidder's start demand is, essentially, the number of lots of the product the bidder wishes to be allocated, as at the start of the clock round.

During a clock round, each bidder may make an *increase bid* on lots of a product, which is a bid to increase the number of lots the bidder wishes to be allocated, at a particular price (the *bid price*). The bid price must be between the *opening price* for the product for the clock round and the *clock price* for the product for the clock round (which is the sum of the opening price and a predetermined percentage of the opening price).

During a clock round, each bidder may make a *decrease bid* on lots of a product, which is a bid to decrease the number of lots the bidder wishes to be allocated, at a particular price (the *bid price*). The bid price must be between the opening price for the product for the clock round, and the clock price for the product for the clock round.

During a clock round, each bidder may make a *maintain bid* on lots of a product, which is a bid to maintain the number of lots the bidder wishes to be allocated, which is taken to be at the *posted price* for the product for the clock round (which is determined in accordance with clause 2A).

Part 2—Processing of bids

Clause 2A Processing algorithm

Clause 2A sets out the *processing algorithm*, by which the bids in the primary stage are processed.

At the end of each clock round, the auction system's processing algorithm processes the bids made during the round by all bidders for all products.

The algorithm processes the increase bids and decrease bids in a round according to the following steps:

1. All increase bids and decrease bids made by bidders for lots of each product in each round are collected. Maintain bids are not collected. They are applied in full at the posted price for the clock round and taken to be at the posted price for the current clock round.
2. The *price point* for each increase and decrease bid is calculated. The price point for a bid is the quotient of:
 - (a) the difference between the bid price and the opening price; and
 - (b) the difference between the clock price and the opening price.

3. A queue of increase and decrease bids is formed, sorted by price point, in ascending order. That is, the increase and decrease bids are ranked, starting with those bids with the lowest percentage increase on the opening price.
4. If there are bids with tied price points, a pseudo-random process is used to break the tie.
5. The bids in the queue are processed in accordance with the following example:
 - (a) The first bid in the queue is either rejected, applied in full, or applied in part. These terms are explained below.
 - (b) If the first bid is applied in full, the bid is deleted from the queue, and the process returns to 5(a) (i.e., the new 'first bid' in the queue is either rejected, applied in full or applied in part).
 - (c) If the first bid is applied in part, the part of the bid that is applied is 'removed' from the bid and the remainder is left in first place in the queue. The process returns to 5(a) (i.e., the new 'first bid' in the queue, which is the remainder of the previous first bid that was applied in part, is either rejected, applied in full or applied in part).
 - (d) If the first bid is rejected, the bid is left in the first place in the queue. The second bid is then either rejected, applied in full or applied in part. If the second bid is applied in full, the process returns to 5(a). If the second bid is applied in part, it is treated in the same manner as set out in 5(b), and the process returns to 5(a) and the first bid in the queue. If the second bid is rejected, the bid is left in the second place in the queue, and the process moves on to the third bid in the queue, for it to be rejected, applied in full or applied in part in the same manner.
6. The process described above continues until either of the following occurs:
 - (a) the last bid in the queue is rejected; or
 - (b) all bids have been removed from the queue.
7. Once the process described above has stopped, the following matters are calculated:
 - (a) the **posted price** for the lots of each product for the clock round; and
 - (b) the **posted demand** for each bidder for the lots of each product for the clock round.

The calculation for the posted price is set out below. The calculations for the posted demand for each bidder is set out under clauses 2B, 2C and 2D.
8. The eligibility points of each bidder for the next clock round is then calculated. These calculations are set out below in clauses 12 and 13.

Maintain bids are not processed by the processing algorithm. They are applied in full at the posted price for the clock round and taken to be made at the posted price for the current clock round.

For a product, the **posted price** for the clock round is calculated as follows:

- (a) if, after all bids are processed, the sum of all bidders' posted demands for the product is greater than the number of lots of the product available at the auction, the posted price for the product is the product's clock price for the round;
- (b) in any other case, either:
 - (i) if at least one decrease bid for the product was applied in full or in part during the round, the posted price for the product is the highest bid price at which a decrease bid was applied for the clock round; or
 - (ii) if no decrease bid for the product was applied in full or in part during the round, the posted price for the product is the product's opening price for the round.

Clause 2B Applying an increase bid

Clause 2B describes whether, and how, an increase bid is applied in full, applied in part, or rejected, and how to calculate the **posted demand** for lots of a product for a bidder who made an increase bid in a clock round.

The test for determining whether an increase bid by a bidder is applied in full, applied in part or rejected, is whether the bidder has sufficient **available activity**. The available activity for a bidder, immediately before processing the increase bid, is a measure of whether the bidder has ‘spent’ its eligibility points as a result of the bids on products it has had processed to that point for the clock round. The available activity is calculated as follows:

Available activity immediately before increase bid is processed is equal to:

- (a) the bidder’s eligibility points at the start of the round; minus
- (b) the sum of the lot ratings of the bidder’s start demands for each product at the start of the round; plus
- (c) the sum of the lot ratings of the number of lots included in any decrease bids for the clock round applied (in part or fully) already during the round, before processing the increase bid in question; minus
- (d) the sum of the lot ratings of the number of lots included in any increase bids for the clock round applied (in part or in fully) already during the round.

Because bidders are potentially bidding on different products, its increase bids and decrease bids may fall in different places in the queue. The calculation of available activity takes into account any increase bids and decrease bids that have already been applied before the increase bid in question is processed.

As mentioned, an increase bid is a bid to increase the number of lots of a product to be allocated to the bidder. If the available activity is greater than the sum of the lot ratings for the number of lots in increase bid, the increase bid is applied in full. If the increase bid is applied in full, subject to the allocation limits, the bidder’s **provisional posted demand** for the product in question is equal to:

- (a) the bidder’s start demand for that product; plus
- (b) if the increase bid was the remainder of an increase bid that had been previously applied in part – the number of lots of the parts of the increase bid already applied in part; plus
- (c) the number of lots of the current increase bid that has been applied in full.

Subject to the application of the minimum spectrum requirement, if the available activity is less than the sum of the lot ratings for the number of lots in an increase bid, the increase bid is applied in part. If the increase bid is applied in part, subject to the allocation limits, the bidder’s **provisional posted demand** for the product in question is equal to:

- (a) the sum of the bidder’s start demand for that product; plus
- (b) if the increase bid was the remainder of an increase bid that had been previously applied in part – the number of lots of the parts of the increase bid already applied in part; plus
- (c) the number of lots that is equal to the quotient of the available activity and the lot rating for the product, rounded down to the nearest integer.

As discussed above, in the case of an increase bid that has been applied in part, the remainder of the increase bid will still have to be processed by the processing algorithm. The remainder is the difference between the number of lots in the increase bid and the number of lots calculated in paragraph (c).

An increase bid is rejected if a minimum spectrum requirement has been selected by a bidder for lots of the product and the provisional posted demand calculated as a result of an increase bid being

applied in part is less than the minimum spectrum requirement. In this case, the **provisional posted demand** for the lots of that product of the bidder is equal to zero.

If applying a bid in full or in part would result in the provisional posted demand for the lots of a product of a bidder exceeding the bidder's allocation limits, the provisional posted demand is reduced to the extent necessary such that the provisional posted demand does not exceed the bidder's allocation limits. The allocation limits apply in relation to each product, other than the combined Perth products, and apply to each other product.

After all increase bids and decrease bids for a clock round have been processed, the bidder's **posted demand** for a product for the clock round is made equal to the provisional posted demand that applies after the last bid in the queue is processed.

Clause 2C Applying a decrease bid

Clause 2C describes whether, and how, a decrease bid is applied in full, applied in part, or rejected, and how to calculate the **posted demand** for lots of a product for a bidder who made a decrease bid in a clock round.

The test for determining whether a decrease bid by a bidder is applied in full, applied in part or rejected, is whether the bidder has sufficient **provisional excess demand**. A bidder's provisional excess demand for lots of a product immediately before processing the decrease bid is a measure of whether applying the bid would result in fewer lots of the product being desired by all bidders than are available in the auction. The bidder's provisional excess demand is the total of:

- (a) the excess demand for the product at the start of the clock round (being the difference between the posted demands of all bidders for the product from the previous clock round and the number of lots available for the product at the auction); plus
- (b) the difference between:
 - (i) the number of lots for the increase bids for the product that have already been applied in full or in part for the clock round, immediately before the decrease bid in question is processed; and
 - (ii) the number of lots for the decrease bids for the product that have already been applied in full or in part, immediately before the decrease bid in question is processed; minus
- (c) the lots for the decrease bid in question.

As mentioned, a decrease bid is a bid to decrease the number of lots of a product to be allocated to the bidder. If the provisional excess demand immediately before the bid is processed is equal to or greater than zero, the decrease bid is applied in full. If the decrease bid is applied in full, the bidder's **provisional posted demand** for the product in question is equal to:

- (a) the bidder's start demand for that product; minus
- (b) if the decrease bid was the remainder of a decrease bid that had been previously applied in part – the number of lots of the parts of the decrease bid already applied in part; minus
- (c) the number of lots of the current decrease bid that has been applied in full.

Subject to the application of the minimum spectrum requirement, a decrease bid is applied in part if:

- (a) the provisional excess demand immediately before the decrease bid is processed is less than zero (that is, if applying the bid in full would mean that the total demand for lots of the product across all bidders would be less than the total number of lots of the product available at the auction); and
- (b) the absolute value of the provisional excess demand is less than the number of lots in the current decrease bid (that is, if before the bid is processed, total demand for lots of the product across all bidders is still greater than the total number of lots of the product available at the auction).

If the decrease bid is applied in part, the bidder's **provisional posted demand** for the product in question is equal to:

- (a) the bidder's start demand for that product; minus
- (b) if the decrease bid was the remainder of a decrease bid that had been previously applied in part –the number of lots of any part of the decrease bid already applied in part; minus
- (c) the difference between the number of lots in the decrease bid and the absolute value of the provisional excess demand.

As discussed above, in the case of a decrease bid that has been applied in part, the remainder of the decrease bid will still have to be processed by the processing algorithm. The remainder is the difference between the number of lots in the decrease bid and the number of lots calculated in paragraph (c).

If:

- (a) a minimum spectrum requirement has been selected by a bidder for a product; and
- (b) but for the minimum spectrum requirement, a decrease bid would be applied in part but would result in the provisional posted demand for the bidder for the product being less than the minimum spectrum requirement;

the decrease bid is applied in full but the **provisional posted demand** is adjusted to zero lots.

A decrease bid is rejected if:

- (a) the provisional excess demand immediately before the decrease bid is processed is less than zero (that is, if applying the bid in full would mean that the total demand for lots of the product across all bidders would be less than the total number of lots of the product available at the auction); and
- (b) the absolute value of the provisional excess demand is greater than the number of lots in the current decrease bid (that is, if before the bid is processed, total demand for lots of the product across all bidders is equal to or less than the total number of lots of the product available at the auction).

If a decrease bid is rejected, the bidder's provisional **posted demand** for the lots of a product for the bidder is equal to:

- (a) the bidder's start demand for that product; minus
- (b) if the decrease bid was the remainder of a decrease bid that had been previously applied in part –the number of lots of any parts of the decrease bid already applied in part.

After all increase bids and decrease bids for a clock round have been processed, the bidder's **posted demand** for lots of a product for the clock round is made equal to the provisional posted demand that applies after the last bid in the queue is processed.

Clause 2D Applying a maintain bid

A maintain bid is a bid to maintain the bidder's start demand for a product at the end of the clock round. It is always applied in full, such that, for the clock round in which the maintain bid is made, the bidder's **posted demand** for the product is equal to the bidder's start demand for that product for the clock round.

Part 3–Arrangements for primary stage

Clause 3 Entries in the auction system before first clock round

Before the first clock round, the auction manager must enter the following information into the auction system for each bidder, as recorded in the register of bidder under section 40:

- > start demand for the lots of each product;

- > initial eligibility points;
- > minimum spectrum requirements (if any) for each product; and
- > allocation limits as they apply to the bidder for the Perth combined products, and for each other product.

Clause 4 Setting bid increment percentage and eligibility requirement percentage

Before the first clock round, the auction manager must set a percentage (*bid increment percentage*) for each product to be applied in calculating the clock price for the product in a clock round. The auction manager must notify the bid increment percentage to each bidder. The bid increment percentage may be different for different products and may be different for the same product between different clock rounds.

Before the first clock round, the auction manager must set a percentage (*eligibility requirement percentage*) to be applied in calculating the activity target during each clock round. The auction manager must notify the eligibility requirement percentage to each bidder. The eligibility requirement percentage may be different for different clock rounds.

Clause 5 Schedule for clock rounds of the primary stage

Clause 5 sets out the requirements the auction manager must meet in scheduling the clock rounds of the primary stage. The auction manager may, at any time, modify the schedule of clock rounds. If this occurs, the auction manager must tell each bidder for the next clock round of the change as soon as practicable.

Clause 6 Recess days

The auction manager may declare a day to be a *recess day* (whether or not the day is a working day) on which there will be no clock rounds. Before declaring a recess day, the auction manager must give bidders an opportunity to comment on the proposed declaration and take into account any comments received. If the auction manager decides to declare a day to be a recess day, the auction manager must tell each bidder of this.

Clause 7 Clock rounds of the primary stage

Each lot of a product is available for bidding in the first clock round, and in each subsequent clock round until the final clock round for bids on lots of the products available. Bidding cannot close on a single product, bidding remains open on all products until the final clock round. However, the rules of the auction may prevent a particular bidder from making a particular bid during clock rounds.

Each bidder may make a bid on lots of a product available for bidding during a clock round.

Clause 8 Information available for clock rounds of the primary stage

Before the start time of each clock round, the auction manager must provide the following information to each bidder for that clock round, using the auction system:

- > the start and end times of the clock round;
- > the opening price and clock price that will apply to each product in the clock round;
- > if the excess demand for a product is less than or equal to 4 lots, a statement to that effect;
- > if the excess demand for a product is greater than 4 lots, the actual excess demand;
- > the eligibility points for the bidder for the round;
- > the eligibility requirement percentage for the clock round; and
- > any other information the auction manager considers necessary or convenient to conduct the primary stage of the auction.

After the end time of each clock round, the auction manager must provide the following information to each bidder for that clock round, using the auction system:

- > the posted prices for each product in the clock round;
- > the posted demands of the bidder for each product in the clock round; and
- > any other information the auction manager considers necessary or convenient to conduct the primary stage of the auction.

Clause 9 Changing bid increment percentage

Clause 9 provides that the auction manager may, at any time during the primary stage, change the bid increment percentage for a product.

Before doing this, the auction manager must tell each bidder of the proposed change, ask each bidder to provide comments on the proposal within the time (being not less than 1 hour) set by the auction manager, and take into account any comments on the proposal that are received within that time.

The auction manager must notify each bidder before the change takes effect.

Clause 10 Changing eligibility requirement percentage

The auction manager may, at any time during the primary stage, change the eligibility requirement percentage to be applied in calculating the activity target during a clock round.

Before doing this, the auction manager must tell each bidder of the proposed change, ask each bidder to provide comments on the proposal within the time (being not less than 1 hour) set by the auction manager, and take into account any comments on the proposal that are received within that time.

The auction manager must notify each bidder before the change takes effect.

Part 4—Bidding in the primary stage

Clause 11 Definitions

Clause 11 defines two terms that are important in Part 4.

A bidder's **activity target** for a clock round is the figure obtained by multiplying the bidder's eligibility points for the round by the eligibility requirement percentage, rounded up to the nearest integer.

A bidder is **active** on lots of a product for a clock round if the bidder has a posted demand for the product that is greater than zero after the end of the clock round.

Clause 12 Eligibility points bidding cap

Subclause 12(1) sets out a bidder's eligibility points at different times during the primary stage. In the first clock round, the bidder's initial eligibility points will be those recorded in the register for the bidder. In subsequent rounds, the bidder's eligibility points will be the lesser of the bidder's eligibility points in the previous clock round; and the bidder's eligibility points calculated in accordance with subclause 13(2).

Subclause 12(2) sets out a limit on a bidder's bidding activity, based on the bidder's eligibility points. If, in a clock round:

- (a) the total value of the lots of each product, in eligibility points, for the start demands of the bidder for the round; plus
- (b) the total value of the lots of each product, in eligibility points, for all the increase bids of the bidder for the round; minus

- (c) the total value of the lots of each product, in eligibility points, for all the decrease bids of the bidder for clock round;

is greater than the bidder's eligibility points at the time of the bid or bids, the bidder is not entitled to make that bid or those bids.

Clause 13 Loss of eligibility points

Clause 13 sets out a process by which a bidder may lose eligibility points. A bidder's eligibility points for the next clock round will be reduced if the bidder does not meet its activity target in the current clock round. The reduction of a bidder's eligibility points for the next clock round is to be calculated as follows:

$$E = \frac{R}{P}$$

(rounded up to the nearest integer);

where:

E is the bidder's eligibility points for the next clock round; and

P is the eligibility requirement percentage that applied in the current clock round.

R is the higher of:

- (a) the total value of the lots, in eligibility points, on which the bidder was active in the current clock round; or
- (b) the sum, in eligibility points, of:
 - (i) the total value of the lots of each product, in eligibility points, for the start demands of the bidder ; and
 - (ii) the total value of the lots of each product, in eligibility points, for all of the increase bids of the bidder; less
 - (iii) the total value of the lots of each product, in eligibility points, for all of the decrease bids of the bidder
 in the current clock round.

Subclause 13(3) sets out a limit on a bidder's bidding activity, based on the bidder's eligibility points reduced as a result of clause 13 (**reduced eligibility points**). If, in a clock round:

- (a) the total value of the lots of each product, in eligibility points, for the start demands of the bidder for the round; plus
- (b) the total value of the lots of each product, in eligibility points, for all the increase bids of the bidder for the round; minus
- (c) the total value of the lots of each product, in eligibility points, for all the decrease bids of the bidder for clock round;

is greater than the bidder's reduced eligibility points at the time of the bid or bids, the bidder is not entitled to make that bid or those bids.

Clause 14 Clock round bids

Clause 14 provides for some general rules in relation to bids during the primary stage.

A bidder is entitled to bid in a clock round if the bidder's eligibility points are not reduced to zero.

A bidder may not make more than one bid for each product in each clock round.

Except where the auction manager takes steps under subsection 50(1) or (2), a bidder's bid is taken to have been made in a clock round when the bid has passed data validation checks that are performed by the auction system.

A bidder may change, delete or replace a bid in the auction system during a clock round as often as desired, subject to the data validation checks that are performed by the auction system. The bid for the lots of a product that will be treated as binding for a bidder is the bid in the auction system at the end time of the clock round.

Clause 15 Validity of bids

Clause 15 provides for some specific rules in relation to bid validity during the primary stage.

For all bids, a bid in a clock round will only be valid if, except where the auction manager takes steps under subsection 50(2), the bid is received by the auction system between the start time and the end time of the clock round.

For increase bids for a product in a clock round, the bid will only be valid if all the following circumstances also exist for the bid:

- (a) the bid price is between the opening price and the clock price for the product for the clock round;
- (b) the bid price is a multiple of 100;
- (c) if the increase bid is for a product other than one of the Perth combined products – the bid, if applied in full, would not exceed the bidder's allocation limits applicable to the product;
- (d) if the increase bid is for one of the Perth combined products – the bid, if applied in full, would not exceed the bidder's allocation limits applicable to the Perth combined products;
- (e) the increase bid would, if applied in full, not result in the bidder's posted demand for the product being greater than the number of lots available for the product at the auction;
- (f) if the bidder selected a minimum spectrum requirement for the product, the increase bid would, if applied in full, not result in the bidder's posted demand for the product being less than that minimum spectrum requirement; and
- (g) the bid is not part of a bidding activity for a round that would contravene subclauses 12(2) or 13(3).

For decrease bids for a product in a clock round, the bid will only be valid if all the following circumstances also exist for the bid:

- (a) the bid price is between the opening price and the clock price for the product for the clock round;
- (b) the bid price is a multiple of 100;
- (c) the decrease bid would, if applied in full, not result in the bidder's posted demand for the product being less than zero;
- (d) if the bidder selected a minimum spectrum requirement for the product, the decrease bid would, if applied in full, result in the bidder's posted demand for the product being either zero or at least that minimum spectrum requirement; and
- (e) the bid is not part of a bidding activity for a round that would contravene subclauses 12(2) or 13(3).

Subclause 15(2) provides that if a bidder does not make a bid for a product, or does not make a valid bid for a product, during a clock round, the bidder is taken to have made a decrease bid at the opening price for the product for the clock round that, if applied in full, would have the effect of reducing its posted demand for that clock round to zero. This decrease bid is processed in accordance with clauses 2A and 2C and may be applied in full, applied in part, or rejected. Such a bid will have consequences for the bidder's eligibility points for the next clock round.

Part 5—Determining the primary winners and primary prices

Clause 16 End of clock rounds

The clock rounds of the primary stage will end when there is a clock round in which, for every product, the excess demand is not greater than zero for the lots of the product. This will be the ***final clock round***. At this point, the auction manager will announce to each bidder, using the auction system, that the clock rounds have ended and that the auction will progress to the secondary stage (if required) or the assignment stage.

Clause 17 Determination of primary winners and primary prices

This clause relates to the determination of spectrum access charges set under Division 2 of Part 6 of the Determination for the purpose of section 294 of the Act and is therefore disallowable under section 42 of the LA.

Clause 17 sets out how to calculate the ***primary price*** for particular bidders. The primary price is a component of the spectrum access charge imposed in relation to the spectrum licence to be issued to those bidders. Clause 17 is made under section 294 of the Act, and is disallowable under section 42 of the LA.

If a bidder has a posted demand for one or more lots of a product after the final clock round, that bidder is a ***primary winner*** in relation to those lots (***allocated lots***).

For each such product, ***total posted price*** for the primary winner is the figure obtained from multiplying the number of allocated lots for the product by the posted price for the product during the final clock round. The ***primary price*** is the sum of the total posted prices for each product for which the primary winner has allocated lots, rounded up to the next hundred.

Part 6—Bringing the primary stage to an end

Clause 18 Results of the primary stage

After the primary winners and primary prices are determined, the auction manager must tell each primary winner, using the auction system, the total number of lots of each product allocated to the primary winner, the total posted price for each product, and the primary price to be paid by the primary winner.

After the primary winners and primary prices are determined, the auction manager must tell all bidders, using the auction system, the total number of primary winners and the total number of lots of each product that have been allocated to primary winners.

Clause 19 End of the primary stage

Immediately after the auction manager provides the results in accordance with clause 18, the auction manager must tell each bidder, using the auction system, that the primary stage is completed.

Schedule 2—Rules for the secondary stage of the auction

The secondary stage simple clock auction is only required to auction single lots of a product that remain unallocated after the primary stage. That is, a lot will only be offered in the secondary stage if it is the only unallocated lot in that product (**residual lot**). If no lots remain unallocated from the primary stage, the secondary stage is not required. If there are single lots in multiple products to be allocated, then those lots will be allocated simultaneously.

The allocation limits continue to apply in the secondary stage. To minimise strategic bidding, if a bidder has nominated their MSR for a product and does not obtain at least that MSR for that product during the primary stage, they will not be permitted to bid on the residual lot of that product in the secondary stage. This is to prevent bidders from reducing demand during the primary stage in order to attempt to obtain an amount of spectrum less than their MSR at a lower price in the secondary stage. Eligibility points are not applicable to the secondary stage, since there is no activity rule or ability to switch demand between products.

Part 1—Application and interpretation

Clause 1 Application of Schedule

This Schedule applies to residual lots, as that term is defined in this clause and explained in the paragraph above, of each product in the 3.6 GHz band.

Clause 1A Bidders to choose between Perth lots, or not to bid on Perth lots

For bidding in the secondary stage in relation to lots within the Perth region, bidders are required to submit a lot preference, prior to Round 1, required by bidders for the special case where a bidder has won one less lot in the Perth region than their allocation limit in the primary stage, and wishes to bid on a single lot in Perth. That bidder must nominate, in writing, their preferred Perth product—Perth Upper or Perth Lower on which they wish to bid. This is to avoid the situation that could occur if the bidder potentially won a lot in both the Perth Upper and Perth Lower products (offered simultaneously in the secondary stage), causing them to exceed their allocation limit. If the bidder does not make a nomination, they may not bid for either residual lot in either product.

This schedule makes any bid on a single lot of the Perth lower band product or the Perth upper band product invalid if it would exceed the bidder's allocation limits applicable to the Perth combined products.

Clause 2 Interpretation

This clause defines a number of key terms used throughout Schedule 2. This section also outlines which lots are subject to the minimum spectrum requirement test and the requirements to meet that test. A lot meets the minimum spectrum requirement test for a bidder if either of the following applies:

- (a) the bidder did not select a minimum spectrum requirement for the lots of that product; or
- (b) if the bidder selected a minimum spectrum requirement for the lots of that product – the bidder was allocated in the primary stage at least the number of lots of that product equal to the minimum spectrum requirement.

Part 2—Arrangements for secondary stage

Clause 3 Schedule for rounds of the secondary stage and setting bid increment percentage

Clause 1 provides for the scheduling of rounds of the auction. There must be at least one working day between the final clock round of the primary stage and the first round of the secondary stage. Rounds must only occur on a working day (as defined in subsection 4(1)) other than a recess day, and will

start and finish between 9 am and 5 pm. The scheduling of the rounds between those times is at the auction manager's discretion. There is no minimum or maximum duration for each round, nor for the interval between rounds. There is no upper or lower limit on the number of rounds that can be held on any day.

All bidders will be notified via the auction system of the anticipated schedule of rounds for a given day a minimum of one hour before the first round of the day. This clause also allows the auction manager to alter the schedule of rounds. However, if this occurs, the auction manager must inform bidders of the change as soon as practicable.

Before the first round of the secondary stage, the ACMA must set the bid increment percentage for each residual lot as a percentage of the starting price for the lot in the first round of the secondary stage, and of the specified price for the lot in any other round of the secondary stage. This bid increment percentage affects the minimum bid that can be made by a bidder for a lot in a round, if the bidder wishes to make bids in later rounds. The ACMA must notify the bid increment percentage to all bidders before the first round of the secondary stage. The bid increment percentage may vary between lots and may vary between rounds.

Clause 4 Rounds of the secondary stage

Each residual lot is available for bidding in the first round of the secondary stage, and in each subsequent round of the secondary stage until the final round for bids on that lot.

During a round of the secondary stage, and subject to this Schedule, each bidder for the round may make a bid on each lot that is available for bidding during that round; and meets the minimum spectrum requirement test for the bidder. All lots available for bidding will be on offer simultaneously.

However, a bidder cannot participate in bidding for a residual lot of a product if allocation of that lot to the bidder would exceed the bidder's allocation limits applicable to the product (other than the Perth combined products) or applicable to the Perth combined products. Eligibility points are not required to bid in the secondary stage.

Clause 5 Information available during rounds of the secondary stage

Before each round starts, the auction manager must use the auction system to inform each bidder of the start and end time of the round. For each residual lot available for bidding in that round that meets the minimum spectrum requirement test for the bidder and on which the bidder may make a bid, the ACMA will supply the following information:

- > the specified price that will apply to the lot in the round;
- > the starting price for the lot for the first round of the secondary stage;
- > for each round other than the first round of the secondary stage – the specified price that applied to that lot in the previous round of the secondary stage;
- > the total number of bidders for whom the lot meets the minimum spectrum requirement and the allocation of the lot as a unit of product would not exceed the bidders allocation limits applicable to the product (other than the Perth combined products) or applicable to the Perth combined products; and
- > any other information the auction manager considers necessary or convenient to conduct the secondary stage of the auction.

After each round of the secondary stage, the auction manager must provide the following information to each bidder for that round, using the auction system:

- (a) the bids made by the bidder during the round (if any);

- (b) if, as a result of the round, the bidder is the secondary winner for a lot - the secondary price for that lot;
- (c) for each lot available for bidding by that bidder in that round - the number of bidders remaining in the secondary stage of the auction for that lot after the end of the round; and
- (d) any other information the auction manager considers necessary or convenient to conduct the secondary stage of the auction.

The ACMA is not prevented from providing any other information to other bidders at any time during the secondary stage.

Clause 6 Recess days

This clause provides that the auction manager may declare a day to be a recess day (whether or not the day is a working day). Before the auction manager declares a recess day, the auction manager must give bidders an opportunity to comment on the proposed declaration and take into account any comments received. If the auction manager declares a recess day the auction manager must inform all bidders of this decision.

Part 3—Bidding in the secondary stage

Clause 7 When bidder cannot make a bid on a lot

The nature of the SCA methodology adopted by the ACMA is such that bidders can make a continue bid or an exit bid. A continue bid in a round is a bid equal to or greater than the specified price for the lot for the round. An exit bid in a round is a bid equal to or greater than the specified price for the lot for the previous round (or starting price for the lot in the first round), but less than the specified price for the lot in that round.

If, in a round of the secondary stage a bidder does not make a bid on a lot, or a bidder is an exit bidder in the circumstances set out in clause 13 in relation to a lot, the bidder cannot make a bid on that lot in any subsequent round of the secondary stage.

Clause 8 Starting price and specified price

This clause provides that a bid below the starting price on a lot will not be accepted.

This clause also explains how the **specified price** for each lot is to be calculated in round of the secondary stage of the auction. The specified price for a lot in the first round is the sum of the starting price for the lot and the bid increment percentage for the lot multiplied by that starting price, rounded up to the next hundred. The specified price for a lot in any other round of the secondary stage is the sum of the specified price for the lot in the previous round of the secondary stage and the bid increment percentage for that lot multiplied by that specified price, rounded up to the next hundred. If a round is the final round for bids on a lot, there is no specified price for the lot in any later round of the auction.

Clause 9 Changing bid increment percentage

This clause provides that the auction manager may, at any time during the auction, change the bid increment percentage set under Clause 3 of this Schedule, to vary the specified price on a lot in future rounds. Adjusting the level of these bid increments may be used to influence the speed at which the auction progresses.

Before making any change, the auction manager must tell bidders of the proposed change, ask bidders for their comments on the proposal within the time (being not less than one hour) set by the auction manager, and take into account any comments received on the proposal. The auction manager must notify all bidders of the change before the round when the change takes effect.

Clause 10 General rules about bidding

A bidder may only make a bid on a lot if the lot meets the minimum spectrum requirement test for the bidder and may only make a bid that is valid in accordance with clause 12 and must not make a bid on a lot if clauses 7 or 13 provide that the bidder cannot make a bid on the lot.

A bid is taken to have been made when the bidder's bid for a round of the auction has passed data validation checks that are performed by the auction system, subject to subsections 50(1) and 50(2) (which allow the auction manager to accept bids by a method other than the auction system and accept bids after the round has closed in certain circumstances).

A bidder may change, delete or replace a bid in the auction system as often as desired during a round in the secondary stage, subject to the data validation checks that are performed by the auction system. The bid that will be treated as binding for a bidder is the bid in the auction system at the end time of a round.

Clause 11 Continue bid made at or greater than specified price

As mentioned above, bidders are allowed to bid above the specified price for the lot in a round in the secondary stage. A bidder may make a continue bid on a lot in a round of the auction (**the relevant round**) that is for an amount (**the advance price**) that is equal to or greater than the specified price for the lot in the relevant round. This continue bid will constitute, in any round after the relevant round where the advance price is greater than or equal to the specified price for the lot in that round, a continue bid made on that lot in that round. This bid will also, in the first round after the relevant round in which the advance price is less than the specified price for the lot in that round, constitute an exit bid made on that lot in that round.

For example, consider a lot with a starting price of \$100,000, and a bid increment percentage of 10%. In the round N, a bidder makes a bid of \$130,000 (advance price continue bid).

| <i>Round</i> | <i>Specified price for the previous round, or starting price for the first round</i> | <i>Specified price for the round</i> | <i>An advance price continue bid in the first round of \$130,000 is taken to be...</i> |
|--------------|--|--------------------------------------|--|
| N | \$100,000 | \$110,000 | A continue bid, being greater than \$110,000 |
| N+1 | \$110,000 | \$121,000 | A continue bid, being greater than \$121,000 |
| N+2 | \$121,000 | \$133,100 | An exit bid, being greater than \$121,000 but less than \$133,100. |

However, a bidder may, in any subsequent round after making the advance price continue bid, make a contrary bid that takes the place of the bid deemed to be made.

Clause 12 Validity of bids

This clause prescribes the requirements for a bid in the secondary stage to be valid.

A bid in a round of the secondary stage is valid if all of the criteria listed in this clause apply to the bid. This criteria includes a requirement that the bid for each product (other than the Perth lower band product and the Perth upper band product, and for the Perth combined products), would not cause the bidder to exceed the bidder's allocation limits, taking into account the size of the lot and the total size of the lots of the product, or combined Perth products, allocated to the bidder in the primary stage.

Clause 13 Exit bids – exclusion from further participation

If, in a round of the secondary stage, a bidder makes an exit bid on a lot (**the exit bidder**) and two or more bidders make a continue bid for the lot, the exit bidder cannot make any bid on the lot in any subsequent round of the secondary stage.

Part 4–Determining the secondary winners and secondary prices

Clause 14 Final round for bids on a lot, final round of the secondary stage, and final high bid

This clause sets out the rules for determining when bidding on a lot ends, the identity of the winning bidder and the final high bid.

The **final round for bids on a lot** is the first round where:

- (a) there is only one bid made for the lot; or
- (b) one or more exit bids, and no more than one continue bid, are made for the lot; or
- (c) no bids are made for the lot.

If two or more continue bids are made for the lot during a round, there will be at least one further round for that lot.

The secondary stage ends when, for each lot of a product in the stage, the final round for bids on a lot has occurred (**the final round of the secondary stage**).

The **final high bid** is the bid that wins the lot, and is used in Part 7 of the Determination to work out the **winning price for the lot** in the secondary stage (the amount of the next highest bid is the winning price). The final high bid for a lot is whichever of the following applies:

- (a) if one bid was made on the lot in the final round for the lot – that bid is the final high bid; or
- (b) if one continue bid was made on the lot in the final round for the lot (regardless of how many exit bids were made in that round) – that continue bid is the final high bid; or
- (c) if all of the following applies:
 - (i) no continue bid was made on the lot in the final round for bids on the lot; and
 - (ii) two or more exit bids were made on the lot in the final round for the lot; and
 - (iii) one of those exit bids (the high exit bid) was greater than each of the other exit bids; – the high exit bid;
- (d) the bid selected through the tiebreaker process set out in clause 15.

That is, generally speaking, the highest bid made on the lot will be the final high bid for the lot. However, in the circumstance where no continue bid is made on the lot in the final round and there are two or more exit bids that are equal and higher than any other exit bid, the final high bid for the lot is worked out in accordance with clause 15.

An exit bid may have been a continue bid in a previous round of the secondary stage, in accordance with clause 11.

Subject to subclauses 15 (2) the bidder who made the final high bid for a lot is the **secondary winner** for that lot. However if there is no bid by any bidder in the first round for a lot, bidders are not considered to have entered an exit bid at the starting price (see definition of a bid at section 4), and so there will be no final high bid in that case (and, therefore, there is no winning bidder for that lot).

Clause 15 Tiebreaker for a lot

This clause applies in relation to a lot if, during the final round stage for bids on a lot, no continue bid was made on the lot, two or more exit bids were made on the lot, and of those exit bids:

- (a) two or more of those exit bids were equal (**the tied exit bids**); and
- (b) the tied exit bids were greater than each other exit bid made in the final round.

Where this clause applies, the **secondary winner** for the lot will be selected from the bidders who made the tied exit bids by pseudorandom selection which must be conducted before the next round of the secondary stage (if any).

For the purposes of paragraph 14(3) (d) of this Schedule, the **final high bid on the lot** is the amount of the last bid made by the secondary winner. This will be the amount of the tied exit bids.

Part 5—Bringing the secondary stage to an end

Clause 16 End of rounds of the secondary stage

The rounds of the secondary stage will end immediately after either:

- (a) (i) if clause 15 applies in relation to a lot; and
- (ii) for each other lot either:
 - (A) there is a secondary winner for the lot; or
 - (B) there were no bids on the lot in the first round of the secondary stage; - the pseudorandom selection mentioned in subclause 15(2) occurs;
- (b) in any other case – the final round of the secondary stage.

After the round of the secondary stage ends, the auction manager must tell each bidder, using the auction system, that the rounds of the secondary stage have ended and that the auction will progress to the assignment stage.

Clause 17 Determination of secondary winners and secondary prices

This clause relates to the determination of spectrum access charges set under Division 2 of Part 6 of the Determination for the purpose of section 294 of the Act and is therefore disallowable under section 42 of the LA.

A bidder who has the final high bid for a lot (the **allocated lot**), in accordance with subclause 14(4), as a result of the final round for bids on a lot in the secondary stage is a secondary winner in the secondary stage for the lot of the product.

The **residual price** for an allocated lot of a product in the secondary stage is an amount equal to:

- (a) if there is only one bid on the lot – the starting price for the lot; or
- (b) if there is more than one bid on the lot – the highest bid made for the lot by any bidder, during any round of the secondary stage, other than the final high bid.

The **secondary price** (rounded up to the next hundred dollars) to be paid by a secondary winner for all the allocated lots of each product of the secondary winner is the sum of all the secondary winner's residual prices.

Clause 18 Results of the secondary stage

After the secondary winners and secondary prices are determined, the auction manager must tell each secondary winner, using the auction system the total number of lots of each product allocated to the secondary winner and the total residual price for the allocated lots of each product and the secondary price to be paid by the secondary winner for all allocated lots.

After the secondary winners and secondary prices are determined, the auction manager must tell all bidders (in the primary stage and secondary stage) the total number of secondary winners and whether a lot of a product has been allocated to secondary winners.

Clause 19 End of the secondary stage

The auction manager must tell each primary winner and each secondary winner, the sum of the primary price and the secondary price for all the allocated lots, in the primary stage or secondary stage, of each product of that winner.

Immediately after the auction manager provides the results in accordance with subclauses 18(1) and 18(2), the auction manager must tell each bidder that the secondary stage is completed.

Schedule 3—Rules for the assignment stage of the auction

Part 1—Application and interpretation

The assignment stage is used to allocate specific frequencies to the winners of generic lots identified at the completion of the primary and secondary stage.

Clause 1 Application of Schedule

This Schedule applies to the lots of each product allocated to a bidder in the primary stage or secondary stage. If all lots of a product were allocated in the primary stage, there is no secondary stage.

Clause 2 Interpretation

This clause defines a number of key terms used throughout Schedule 3.

Part 2—Arrangements for assignment stage

Clause 3 Schedule for assignment rounds of the assignment stage

These clauses set out when assignment rounds can be held and what products can be assigned in each assignment round. It also specifies information that must be provided to bidders prior to the start of the assignment stage and before each assignment round.

After the completion of the primary stage and secondary stage (if any), the auction manager must announce the anticipated start time and end time of each assignment round and the product or products that will be the subject of each assignment round. The start time and end time of each assignment round must be announced at least 1 hour before the assignment round starts.

The first assignment rounds will not begin until at least two full working days after the end of the primary stage and secondary stage (if any). Assignment rounds must be held between 9 am and 5 pm on working days.

The auction manager has discretion over the scheduling and duration of the assignment rounds, the number of rounds per day, and the products that will be assigned in each round. The start and end times for each assignment round must be announced at least one hour before the assignment round starts.

Two or more products may be the subject of a given assignment round. A product must not be the subject of more than one assignment round

Part 3—Bidding in the assignment stage

Clause 4 Frequency range options in assignment rounds

This section explains how the set of frequency ranges options available to bidders for lots won in the allocation stage will be determined. They also specify who is entitled to bid in the assignment stage and information that must be provided to bidders.

Only bidders who have won at least one lot of product in the primary or secondary stage are eligible to bid in the assignment round for that product. When the assignment round for a product commences, the auction manager must provide each bidder with a list of the contiguous frequency range options for the lots of a product won by the bidder in the primary or secondary stage. That is if a bidder won three lots of a product in the allocation stage, then all the options available for that bidder in the assignment round will group the three lots together.

At least two working days before the start of the first assignment round, the auction manager must provide each bidder in the assignment stage with the list of frequency range options available to the bidder in each of the assignment rounds.

Subject to this schedule, for each product, the auction manager must determine a list of frequency range options available to each bidder so that the frequency range included within each option for a bidder is a contiguous frequency range corresponding in bandwidth to the total size of the lots of the product that the bidder was allocated in the primary stage or secondary stage. For each option determined by the auction manager, there must also exist at least one frequency range option for every other bidder so that each bidder's frequency range complies with the contiguity of the frequency range and none of the frequency ranges overlap.

If some lots of a product were not allocated in the primary stage or secondary stage (if any), the auction manager must, in determining the frequency range options available to each bidder, ensure that the frequency range assigned to the unallocated lots of the product (other than the Perth lower band product) will be a contiguous frequency range corresponding in bandwidth to the total size of the unallocated lots (when expressed in MHz) and adjacent to the frequency 3700 MHz. Likewise, the auction manager must, in determining the frequency range options available, ensure any unallocated lots of the Perth lower band product will be a contiguous frequency range corresponding in bandwidth to the total size of the unallocated lots (when expressed in MHz).

If, in the primary stage or secondary stage some lots of the Perth upper band product (the upper **band lots**), or lots of the Perth lower band product (the **lower band lots**) were allocated to a bidder, the auction manager must, in determining the frequency range options available to a bidder for the Perth upper band product and Perth lower band product apply the following criteria:

- (a) if only one bidder is allocated both lower band lots and upper band lots, ensure that the frequency range assigned to the lower band lots and upper band lots will each be a contiguous frequency range corresponding in bandwidth to the total size of the lower band lots and upper band lots (when expressed in MHz), as the case may be, and be adjacent to each other;
- (b) if two or more bidders were allocated lower band lots and upper band lots, ensure that, for the bidder who was allocated the most lower band lots and upper band lots, the frequency ranges assigned to the lower band lots and the upper band lots will each be a contiguous frequency range corresponding in bandwidth to the size (when expressed in MHz) of the lower band lots and the upper band lots, as the case may be, and be adjacent to each other;
- (c) if two or more bidders were allocated lower band lots and upper band lots and the total number of those lots is the same for each bidder, but the number of upper band lots is not the same, ensure that, for the bidder who was allocated the most upper band lots, the frequency ranges assigned to the lower band lots and the upper band lots will each be a contiguous frequency range corresponding in bandwidth to the size (when expressed in MHz) of the lower band lots and the upper band lots, as the case may be, and be adjacent to each other;
- (d) if two or more bidders were allocated lower band lots and upper band lots and were allocated the same number of lower band lots and the same number of upper band lots:
 - (i) the lower band lots and the upper band lots are each to become the subject of an assignment round; and
 - (ii) subclause (6) is to apply.

For assignment rounds arising under paragraph (d), a frequency range assigned to lower band lots may not necessarily be adjacent to a frequency range assigned to upper band lots.

If a bidder is participating in a given assignment round for more than one product, the auction manager may determine frequency range options available to the bidder that deal with the products as a group, providing the requirements of the clause are met for each individual product in the group.

At least 2 working days before the start of the first assignment round, the auction manager must provide each bidder in the assignment stage with the list of frequency range options available to the bidder in each of the assignment rounds for lots of a product that have been allocated to the bidder in the primary stage or secondary stage.

Offering frequency range options to a group of products is intended to improve the likelihood of providing geographic contiguity to bidders, as they would be able to acquire lots across contiguous regions with the same frequency ranges. Such frequency and geographic contiguity is expected to facilitate the efficient use of spectrum by new licensees.

Clause 5 Assignment bids

These clauses describe what an assignment bid consists of, what a bidder can bid on, how a bid can be changed during an assignment round and which bids will be considered binding.

An **assignment bid** consists of the frequency range option that is being bid for and a bid price for the frequency range option that is a multiple of one hundred.

An eligible bidder may only submit a bid for a frequency range option in the assignment round that has been provided to them by the auction manager. Bidders can bid on more than one frequency range option within a round, showing their order of preference by the amounts bid. However, bidders are not obliged to place a bid in any assignment round.

A bidder can change, delete or replace an assignment bid during an assignment round as often as desired, subject to the data validation checks that are performed by the auction system. The assignment bid that will be treated as binding for a bidder is the assignment bid in the auction system at the end time of the assignment round.

A bidder is taken to have bid zero dollars on each frequency range option that it does not place a valid assignment bid on. If a bidder places no assignment bids at all during the assignment stage, that bidder is considered to have bid zero dollars for every frequency range option.

Clause 6 Validity of assignment bids

This section sets out the conditions for valid bids during the assignment rounds that will be considered in determining winning assignment bids.

To be valid, except where section 50 applies, an assignment bid must be received between the start and end time of the assignment round for the product or group of products, be for a frequency range option made available to the bidder and the amount bid for the frequency range option must be for a multiple of one hundred.

Part 4—Determining winning assignment bids and assignment prices

Clause 7 Determination of winning assignment bids

This clause explains the rules for deciding the winning assignment stage bids. This clause relates to the spectrum access charges determined under Division 2 of Part 6 of the Determination for the purpose of section 294 of the Act and is therefore disallowable under section 42 of the LA.

After the assignment round has ended, the auction manager must determine the winning assignment bids for each product or group of products and tell each winning assignment round bidder its winning assignment bid.

The conditions that the set of winning bids must meet are the following:

- (a) exactly one assignment bid (whether a submitted assignment bid or an assignment bid of zero dollars taken to have been made under subclause 5(5) or 5(6)) is selected from each bidder; and
- (b) the frequency ranges included in any pair of winning assignment bids for a product or group of products do not overlap; and
- (c) if relevant, the frequency range of any unallocated lots of a product is assigned in accordance with subclause 4(3) of Schedule 3 (see above); and
- (d) if relevant, subclause 4(4) of Schedule 3 (see above) is applied.

Subject to (a)-(d) above, the assignment bids selected must maximise the sum of the assignment bid prices. The auction system will use a computerised pseudorandom selection process to determine winning bids if more than one combination of bids meet the above criteria.

Clause 8 Determination of assignment prices

This clause explains how the price of each winning assignment stage bid is calculated in each round. This clause relates to the spectrum access charges determined under Division 2 of Part 6 of the Determination for the purpose of section 294 of the Act and is therefore disallowable under section 42 of the LA.

The auction manager must determine the assignment price for each winning bid in an assignment round. The assignment price in a round will be zero if there is only one bidder in that round. For a round with more than one bidder the assignment price for each bid in the winning combination of assignment bids may be zero but can be no more than the assignment bid price.

Subject to the constraint that the assignment price must be no more than the assignment bid price, a set of assignment prices in the assignment round must be selected so that:

- (a) there is no alternative bidder, or group of bidders, who (based on their assignment bids) would pay more than any winning assignment round bidder or group of winning assignment round bidders; and
- (b) if more than one set of assignment prices satisfies paragraph (a)—the sum of the assignment prices is also minimised; and
- (c) if more than one set of assignment prices satisfies paragraphs (a) and (b) – it is the solution to the formula listed in subclause (6), which applies a weighted Nearest–Vickrey–Core pricing rule.

Under the weighted Nearest–Vickrey–Core pricing rule the bidder pays a price less than its bid price. There are a number of steps to determine this price. First, the Vickrey price for each bidder is calculated. The Vickrey price is calculated by taking the winning bidder’s assignment bid price, and subtracting the difference between the highest value combination of assignment bids and the highest value package combination of assignment bids that can be formed without the winning bidder. If no other bidder or group of bidders has offered a bid price higher than the Vickrey price, then it is the valid assignment price. If not, the price must be raised from the Vickrey price to satisfy that condition. (That is, the price is raised by the minimum amount required to defeat other bidders on the frequency assignments). When this price adjustment is required for a number of bidders the price increase is shared between bidders proportional to the reserve prices of their winning packages.

As a result, the weighted Nearest–Vickrey–Core price for a package must be the smallest amount that is:

- (a) smaller than the amount bid for the package;

- (b) at least the amount by which the package has suppressed the quantity won by the other bidders (Vickrey price);
- (c) at least sufficient so that the total amount paid by all the winning bidders is not less than the amount an alternative bidder or group of bidders would be prepared to pay (Core price).

A bidder who has assignment prices for winning assignment bids in an assignment round is an **assignment winner** in the assignment stage for an assignment of a frequency range or frequency ranges to lots of a product or group of products.

The **total assignment price**, to be paid by the assignment winner, for assignment of a frequency range or frequency ranges to lots of a product or group of products in the assignment stage is an amount equal to the sum of the assignment prices for the assignment of all frequency ranges of the assignment winner.

Assignment prices will be rounded up to the next hundred dollars.

Part 5 –Bringing the assignment stage to an end

Clause 9 Results of the assignment stage

After the end of all assignment rounds, the auction manager must tell each winning assignment round bidder the frequency ranges assigned to lots of a product allocated to the bidder in the primary stage or secondary stage and any assignment price for the frequency ranges assigned.

Clause 10 End of the assignment stage

The assignment stage is complete when the auction manager has notified all bidders of the results of every assignment round.